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# PLEASE RETURN TITLE 13 ELECTION LAWS

STATE OF MONTANA  
1987

MONTANA CODE ANNOTATED,  
As Amended

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Helena, Montana

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**TITLE 13  
ELECTION LAWS  
STATE OF MONTANA**

**1987**

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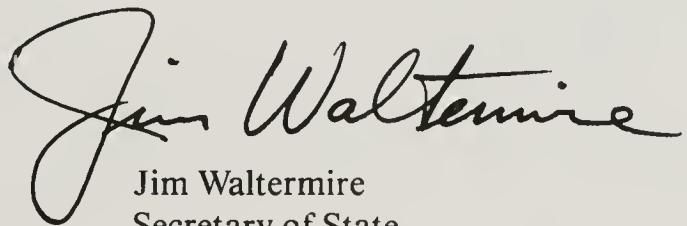


## PREFACE

This volume is published by the Secretary of State in accordance with Section 13-12-101, MCA. It contains all of Title 13 of the Montana Code Annotated including amendments and additions enacted by the 1987 Legislature. Section histories have been omitted from this printing. They may be obtained by referring to the complete MCA.

The vast majority of election laws are included in this volume. There are some other statutes not contained in Title 13 which may affect some specific aspect of elections. For these, you can also refer to the complete Montana Code Annotated.

The purpose of this printing is to enable election judges at each polling place, as well as others, to have a better access to Montana's election laws. It is a tool to be used to insure each voter the opportunity to participate in an orderly, efficient, and secure election.



A handwritten signature in black ink, appearing to read "Jim Waltermire".

Jim Waltermire  
Secretary of State

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## **TITLE 13**

### **ELECTIONS**

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1. General Provisions.  
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### **CHAPTER 1**

#### **GENERAL PROVISIONS**

##### **Part 1 -- General Provisions**

###### **Section**

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13-1-102. Elections by secret ballot.  
13-1-103. Determination of winner.  
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#### Part 1

#### General Provisions

13-1-101. **DEFINITIONS.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.
- (2) "Candidate" means:
  - (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;
  - (b) for the purposes of chapters 35, 36, or 37, an individual who has publicly announced his intention to seek nomination or election to public office by write-in vote and who has received a contribution or made an expenditure or has given an authorization to another person to receive a contribution or make an expenditure for the purpose of supporting his nomination or election.
- (3) (a) "Contribution" means:
  - (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;
  - (ii) a transfer of funds between political committees;
  - (iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time and/or purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for his filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for himself and his family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee.

(8) "General election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1).

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a

statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for such nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector.

**13-1-102. ELECTIONS BY SECRET BALLOT.** All elections shall be by secret ballot.

**13-1-103. DETERMINATION OF WINNER.** The individual receiving the highest number of votes for any office at an election is elected or nominated to that office.

**13-1-104. (Contingent effective date-contingent upon establishment of Northwest Regional Preference Primary by August 1, 1987.) TIMES FOR HOLDING GENERAL ELECTIONS.** (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire

before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually shall be held on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day as provided in subsection (3) or on the first Tuesday after the first Monday in November, at the discretion of the governing body.

**13-1-104. TIMES FOR HOLDING GENERAL ELECTIONS.** (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually shall be held on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day as provided in subsection (3) or on the first Tuesday after the first Monday in November, at the discretion of the governing body.

**13-1-105. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-1-106. TIME OF OPENING AND CLOSING OF POLLS FOR ALL ELECTIONS -- EXCEPTIONS.** (1) Polls must be open from 7 a.m. to 8 p.m., except polling places having fewer than 200 registered electors, which must be open from noon to 8

p.m. or until all registered electors in any precinct have voted, at which time the polls shall be closed immediately.

(2) When an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polls shall be opened and closed at the times set for the school election, as provided in 20-20-106.

**13-1-107. TIMES FOR HOLDING PRIMARY ELECTIONS.** (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

(3) If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the cost of this election must be paid by the municipality.

**13-1-108. NOTICE OF SPECIAL ELECTIONS.** Notice of any special election shall be published at least once a week for the 3 successive weeks before the election on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held.

**13-1-109. ELECTION RECORDS OPEN TO PUBLIC.** Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

**13-1-110 reserved.**

**13-1-111. QUALIFICATIONS OF VOTER.** (1) No person may be entitled to vote at elections unless he has the following qualifications:

(a) He must be registered as required by law.

(b) He must be 18 years of age or older.

(c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least 30 days.

(d) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law.

**13-1-112. RULES FOR DETERMINING RESIDENCE.** For registration or voting, the residence of any individual shall be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any public prison; or solely as a result of residing on a military reservation.

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose his residence if he goes into another state or other district of this state for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If an individual moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where his family resides with the intention of remaining is a resident of the place where he resides.

(8) A change of residence can be made only by the act of removal joined with intent to remain in another place.

13-1-113. **ONLY ONE RESIDENCE.** There can be only one residence.

13-1-114. **COMPUTATION OF ELECTOR'S AGE AND TERM OF RESIDENCE.** An elector's age and the term of his residence must be computed by including the day of election.

13-1-115. **PRIVILEGE FROM ARREST.** Electors are privileged from arrest during their attendance at elections and in going to and from voting places, except in cases of treason, felony, or breach of the peace.

13-1-116 through 13-1-120 reserved.

13-1-121. **QUESTION OF HOLDING CONSTITUTIONAL CONVENTION.** Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each 20th year following its last submission, unless otherwise submitted earlier.

13-1-122. **BALLOT FORM AND CONTENT.** The ballot submitting the question to the people shall contain the following:

Article XIV, sections 3 and 4, of the Montana constitution requires the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

- FOR calling a constitutional convention
- AGAINST calling a constitutional convention

## Part 2

## Role of Secretary of State

13-1-201. **CHIEF ELECTION OFFICER.** The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in chapters 35, 36, or 37 of this title.

13-1-202. **FORMS AND RULES PRESCRIBED BY CHIEF ELECTION OFFICER.** (1) In carrying out his responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

- (a) written directives and instructions relating to and based on the election laws;
- (b) sample copies of prescribed and suggested forms; and
- (c) advisory opinions on the effect of election laws other than those laws in chapters 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. He must seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

13-1-203. **CHIEF ELECTION OFFICER TO ADVISE, ASSIST, AND TRAIN.** The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. He shall hold at least one workshop each year to provide training and assistance to election administrators. Election administrators shall be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, such workshops may be held in several sessions at separate locations in the state.

13-1-204. **ELECTION RECORDS TO BE KEPT BY SECRETARY OF STATE.** (1) The secretary of state shall maintain current and accurate records including:

- (a) a list of all precincts in each county;
- (b) a map showing the boundaries of all precincts in each county;
- (c) a count of the number of registered voters in each precinct for the latest general election;
- (d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the latest general election;
- (e) a count of votes cast at the latest general election by precinct and by legislative, judicial, and multicounty districts.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections shall be open for public inspection during normal office hours.

### Part 3

#### Local Election Administration

**13-1-301. ELECTION ADMINISTRATOR.** (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections and shall keep all records relating to elector registration and elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of such political subdivision, as provided by 13-1-401.

**13-1-302. (Contingent effective date-contingent upon establishment of Northwest regional preference primary by August 1, 1987.) ELECTION COSTS.** (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) The costs of a presidential preference primary provided for in 13-10-401 must be paid by the county; however, if the primary is held in conjunction with a regularly scheduled school election, the county and the school district each shall bear a proportionate share of the costs as determined by the county election administrator and the school district election administrator. If a county election administrator specifies polling places or hours that differ from those set for the school election, the county shall bear any additional costs incurred as a result of the different polling places or hours.

(5) Costs of elections may not include the services of the election administrator or capital expenditures.

(6) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(7) Election costs shall be paid from county funds and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(8) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

**13-1-302. ELECTION COSTS.** (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

**13-1-303. DISPOSITION OF BALLOTS AND OTHER ELECTION MATERIALS.** (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election shall be kept in the unopened packages received from the election judges for a period of 12 months. Such packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may destroy the ballots without opening the packages.

(2) The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records. Each election administrator shall prepare a plan for retention and destruction of election records in the county and shall submit it to the secretary of state for approval. After approval of such a plan, records may be destroyed as provided in the plan.

**13-1-304. DUTIES OF OFFICIALS WHEN ELECTION NOT HELD.** If a scheduled election is not necessary or is canceled for any reason, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.

## Part 4

## Political Subdivision Elections

**13-1-401. MANNER OF CONDUCTING GENERAL ELECTIONS FOR POLITICAL SUBDIVISIONS REQUIRED TO HOLD ANNUAL ELECTIONS.** (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) A political subdivision election subject to 13-1-104(3) may be conducted by mail ballot as provided in Title 13, chapter 19.

(4) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1), (2), or (3) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.

## CHAPTER 2

## REGISTRATION OF ELECTORS

## Part 1 -- Registrars

## Section

13-2-101. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-2-102. Deputy registrars.  
Sections 13-2-103 through 13-2-110 reserved.  
13-2-111. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-2-112. Register of electors to be kept.  
13-2-113. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-2-114. Registration numbers to be assigned.  
13-2-115. Registration lists to be prepared.  
13-2-116. Precinct register.  
13-2-117. County governing body to provide election administrator with sufficient help.  
Sections 13-2-118 through 13-2-120 reserved.  
13-2-121. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-2-122. Charges for registers, elector lists, and mailing labels made available to public.

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- 13-2-201. Hours of registration.
- 13-2-202. Registration by personal appearance.
- 13-2-203. Registration by mail.
- 13-2-204. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-2-205. Procedure when prospective elector not qualified at time of registration.
- 13-2-206. Citizenship requirements.
- 13-2-207. Notice of registration.  
Sections 13-2-208 through 13-2-210 reserved.
- 13-2-211. Elector in the United States service defined.
- 13-2-212. Registration of electors in the United States service.
- 13-2-213. Repealed. Sec. 5, Ch. 396, L. 1985
- 13-2-214. Classification of federal post card application.
- 13-2-215. Registration of electors whose United States service or employment has terminated.

**Part 3 -- Close of Registration**

- 13-2-301. Close of registration -- procedure.
- 13-2-302. Registration immediately before an election.
- 13-2-303. Repealed. Sec. 407, Ch. 571, L. 1979.

**Part 4 -- Cancellation and Challenge of Registration**

- 13-2-401. Cancellation of registration for failure to vote -- reregistration.
- 13-2-402. Other reasons for cancellation.
- 13-2-403. Challenge of registration.
- 13-2-404. Challenges prior to election.

**Part 5 -- Transfer of Registration**

- 13-2-501. Renumbered 13-2-511 by Code Commissioner, 1979.
- 13-2-502. Renumbered 13-2-513 by Code Commissioner, 1979.
- 13-2-503. Renumbered 13-2-515 by Code Commissioner, 1979.  
Sections 13-2-504 through 13-2-510 reserved.
- 13-2-511. Transferring registration or changing name.
- 13-2-512. Right to vote when precinct or name changed.
- 13-2-513. Procedure for transferring registration.
- 13-2-514. Change of residence to another county.
- 13-2-515. Inquiry as to previous registration -- notices of changes.

**Part 6 -- Effect of Registration**

- 13-2-601. Name on precinct register prima facie evidence of right to vote.
- 13-2-602. Joinder of parties in proceedings to compel entry of name in register.
- 13-2-603. Erroneous omission of name from precinct register.

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Part 1

**Registrars**

13-2-101. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-2-102. **DEPUTY REGISTRARS.** (1) A notary public who fulfills the requirements of subsection (4) may act as a deputy registrar in the county in which he resides without having been appointed by the county governing body. If a notary public fails to fulfill the requirements of subsection (4), he may not act as a deputy registrar.

(2) (a) The governing body of each county may at its discretion appoint two or more deputy registrars for each precinct in the county before March 1 of each even-numbered year.

(b) The number of deputy registrars, if appointed, shall be equally divided between the political parties meeting the requirements of 13-10-601 unless one or more of the parties fail to submit the list required in subsection (3) or submit an incomplete list. A political party which qualifies under 13-10-501 may request the appointment of deputy registrars and shall submit a list for such appointments within 30 days of such qualification.

(c) An appointed deputy registrar must be a resident elector in the precinct for which appointed but may register electors in all precincts in the state.

(3) Deputy registrars shall be appointed from lists of individuals recommended by the qualified political parties, submitted by February 1 of even-numbered years. If no lists are submitted by political parties, the governing body may appoint two deputy registrars for each precinct without party recommendations. Failure of the governing body to make appointments in all precincts does not preclude making appointments in some precincts.

(4) Each election administrator shall provide training in registration procedures to all appointed deputy registrars and any notary public requesting the training and shall issue a certificate to each on successful completion of the training. The training and certification must be completed by March 15 of each even-numbered year. No one is a qualified deputy registrar without a current certificate. All certificates expire on March 15 of the following even-numbered year.

(5) Each election administrator shall certify to the secretary of state the name of each deputy registrar to whom a certificate has been issued. The secretary of state shall then compile a list of deputy registrars with current certificates and make that list available to each election administrator and the public.

(6) Deputy registrars shall forward all completed cards to the county registrar within 3 days. Registration cards properly executed before a deputy registrar prior to the close of registration shall be accepted for 3 days after the close of registration.

13-2-103 through 13-2-110 reserved.

13-2-111. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-2-112. **REGISTER OF ELECTORS TO BE KEPT.** Each election administrator shall keep an official register of electors in the manner he considers most efficient. The original signed registration form for each elector shall be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms shall be prescribed by the secretary of state.

13-2-113. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-2-114. **REGISTRATION NUMBERS TO BE ASSIGNED.** (1) The registration form for each elector shall be assigned a number by the election administrator, using a system of numbering that best accommodates the filing system and list preparation method used. The election administrator may adopt the use of the elector's social security number as the registration number. If social security numbers are used, they may not be printed on lists of registered voters or released as public information.

(2) If social security numbers are used as the registration number, the election administrator may assign an alternative number for any elector who does not have a social security number or who declines to provide the number. A system of assigning alternative numbers shall be developed in consultation with the secretary of state.

(3) Upon receipt by the election administrator of a properly completed registration card, the registration of the elector is complete, and the election administrator shall assign a registration number.

13-2-115. **REGISTRATION LISTS TO BE PREPARED.** (1) Immediately after registration is closed, the election administrator shall prepare and have printed lists of all registered electors in each precinct. Names of electors shall be listed alphabetically, with their residence address or mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters shall be displayed at the polling place. Extra copies of the lists shall be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

13-2-116. **PRECINCT REGISTER.** (1) Before each election, the election administrator shall prepare a precinct register for each precinct for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of the registered electors, a space for the signature of the elector, and such other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient. (3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held.

**13-2-117. COUNTY GOVERNING BODY TO PROVIDE ELECTION ADMINISTRATOR WITH SUFFICIENT HELP.** The county governing body must provide the election administrator with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

13-2-118 through 13-2-120 reserved.

13-2-121. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-2-122. CHARGES FOR REGISTERS, ELECTOR LISTS, AND MAILING LABELS MADE AVAILABLE TO PUBLIC.** Upon written request, the registrar shall furnish to any elector for noncommercial use a copy of the official precinct registers, a current list of registered electors, or mailing labels for registered electors. Upon delivery, the registrar may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

## Part 2

### Registration Procedures

**13-2-201. HOURS OF REGISTRATION.** The election administrator's office shall be open for registration of electors from 8 a.m. until 5 p.m. on all regular working days. The office may be kept open for the registration of electors at other times at the discretion of the election administrator.

**13-2-202. REGISTRATION BY PERSONAL APPEARANCE.** An elector may register by appearing before the registrar or a deputy registrar and:

- (1) answering any questions asked by the official concerning items of information called for in the registration form;
- (2) signing and verifying or affirming the affidavit or affidavits on the form.

**13-2-203. REGISTRATION BY MAIL.** (1) A qualified individual may register by mailing, postage paid, a properly completed registration form to the election administrator in the county in which he resides.

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form shall be designed as prescribed by the secretary of state. A form prescribed by the secretary of state explaining

voter registration qualifications, deadlines, and purge information shall be distributed with the mail registration form.

(3) The elector shall complete, sign, and, except as provided in 13-2-212, either verify or affirm the mail registration form before a notary public or other officer empowered to administer oaths or complete and sign the form and obtain the signature, address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on the registration form.

(4) The registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed by the witness or officer before whom signed.

**13-2-204. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-2-205. PROCEDURE WHEN PROSPECTIVE ELECTOR NOT QUALIFIED AT TIME OF REGISTRATION.** An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may register if it appears that he will become qualified to vote by election day.

**13-2-206. CITIZENSHIP REQUIREMENTS.** A person shall not be permitted to register until he attains United States citizenship.

**13-2-207. NOTICE OF REGISTRATION.** (1) The election administrator shall give or mail to each elector a notice, affirming registration and giving the location of the elector's polling place. Mailed notices must conform to postal regulations to ensure return, not forwarding, of undelivered notices.

(2) The election administrator must investigate the reason for the return of any mailed notices and correct the address on the registration form and mail a new notice or cancel the registration of the elector if a diligent effort fails to locate the elector named on the registration form.

**13-2-208 through 13-2-210 reserved.**

**13-2-211. ELECTOR IN THE UNITED STATES SERVICE DEFINED.** "Elector in the United States service" means:

(1) a member of the armed forces in the active service and his spouse and dependents;

(2) a member of the merchant marine of the United States and his spouse and dependents;

(3) a member of a religious group or welfare agency assisting members of the armed forces of the United States, who is officially attached to and serving the armed forces, and his spouse and dependents;

(4) a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

**13-2-212. REGISTRATION OF ELECTORS IN THE UNITED STATES SERVICE.** (1) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by mailing to the election administrator:

(a) the registration form, filled out and signed; or  
(b) the federal post card application, filled out and signed.  
(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

13-2-213. **REPEALED.** Sec. 5, Ch. 396, L. 1985.

13-2-214. **CLASSIFICATION OF FEDERAL POST CARD APPLICATION.** (1) Unless the elector is already registered, a federal post card application received from an elector in the United States service shall be treated as a simultaneous application for registration and for ballot for each primary and general election in which he is entitled to vote during the year of its receipt.

(2) Upon receipt by the election administrator of a federal post card application, properly filled out and signed, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered;

(c) send to the applicant by the fastest mail service available a notice that he has been registered and informing him that a ballot is enclosed or that he will be mailed an absentee ballot for the next election in which he is entitled to vote under subsection (1).

(3) The election administrator may use photocopies of the post card application to complete all necessary records.

13-2-215. **REGISTRATION OF ELECTORS WHOSE UNITED STATES SERVICE OR EMPLOYMENT HAS TERMINATED.** Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when and place where registration is required shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to noon on the day before the election. Said elector shall execute a sworn affidavit qualifying him under this section to be filed in the office of his registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which he is entitled to vote. This certificate shall be presented to the election judges of that precinct at the time of voting.

### Part 3

#### Close of Registration

13-2-301. **CLOSE OF REGISTRATION -- PROCEDURE.** (1) The election administrator shall:

(a) close registrations for 30 days before any election; and  
(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of

general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice shall be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and thereafter the qualified elector is eligible to vote in the next election.

**13-2-302. REGISTRATION IMMEDIATELY BEFORE AN ELECTION.** An individual may register during the time when registration is closed preceding any election, and the election administrator shall keep his registration form in a separate file until it can be properly entered after the election.

**13-2-303. REPEALED.** Sec. 407, Ch. 571, L. 1979.

#### Part 4

##### Cancellation and Challenge of Registration

**13-2-401. CANCELLATION OF REGISTRATION FOR FAILURE TO VOTE -- REREGISTRATION.** (1) Except as provided in subsection (3), within 60 days after every general election in which a president is elected, the election administrator shall:

(a) cancel the registration of the electors who have not voted in each precinct, as shown by the official pollbook and precinct register of each precinct;

(b) mark the form of each elector whose registration has been canceled; and

(c) place canceled forms for the entire county in alphabetical order in the canceled file.

(2) An elector whose registration is canceled may reregister in the same manner as if he were registering for the first time.

(3) The registration of an elector who votes by absentee ballot but whose ballot does not arrive in time to be counted may not be canceled if his ballot is received and rejected by the election administrator within 10 days succeeding the election.

(4) A notice of cancellation shall be published on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county once a week for 2 weeks prior to the date of cancellation. The notice shall be run in a display advertisement (known as ROP in the trade) if in a newspaper or as an announcement if on radio or television and shall be in a form prescribed by the secretary of state. The names of those electors whose registration has been canceled need not be published.

**13-2-402. OTHER REASONS FOR CANCELLATION.** The election administrator shall cancel the registration of any elector:

(1) at the written request of the registered elector;

- (2) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under 72-16-217;
- (3) if the elector is of unsound mind as established by a court;
- (4) if the incarceration of an elector in a penal institution for a felony conviction is legally established;
- (5) if a certified copy of a court order directing the cancellation is filed with the election administrator;
- (6) if an elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or
- (7) if a notice is received from another county or state that the elector has registered in that county or state.

**13-2-403. CHALLENGE OF REGISTRATION.** (1) Forty-five or more days before the close of registration for an election, three registered electors of a precinct may challenge the registration of an elector by filing affidavits giving the name of the elector whose registration is challenged, the address at which he is registered, and a statement that the affiant has personal knowledge that the elector does not reside at the address where registered.

(2) No later than 3 days after the filing of affidavits as provided in subsection (1), the election administrator must send written notice to the elector whose registration is challenged, at the address shown on the registration form. The notice must state that registration will be canceled within 15 days of the filing of the affidavits unless the elector refutes the affidavits by submitting proof or a sworn statement that he resides at the address given on his registration form.

(3) The election administrator must cancel the registration of an elector whose registration is challenged under this section 15 days after the filing of the affidavits required in subsection (1) unless proof or a sworn statement as required in subsection (2) is received.

(4) If an elector proves or swears he resides at the address given on his registration form after his registration has been canceled as provided in this section, he may reregister by completing a new registration form. Such registration shall be effective for the next election even though the registration for that election is closed.

**13-2-404. CHALLENGES PRIOR TO ELECTION.** (1) If an elector believes another elector fails to meet the qualifications required in 13-1-111, he may challenge the right of that elector to vote any time not later than 20 days prior to an election. The challenge must:

- (a) be filed with the election administrator and be signed by the elector;
- (b) be verified by the affidavit of the elector that the elector designated is not entitled to vote;
- (c) state the grounds of the challenge, objection, and disqualification.
- (2) The election administrator shall:
  - (a) file the affidavit of challenge in his office;
  - (b) deliver a correct copy of the affidavit to the judges of election, together with the precinct register;
  - (c) write in the precinct register beside the name of any individual whose qualifications are challenged the words "to be challenged";
  - (d) notify the elector within 5 days by certified or registered mail that his qualifications as an elector have been challenged.

**Part 5****Transfer of Registration**

13-2-501. Renumbered 13-2-511 by Code Commissioner, 1979.

13-2-502. Renumbered 13-2-513 by Code Commissioner, 1979.

13-2-503. Renumbered 13-2-515 by Code Commissioner, 1979.

13-2-504 through 13-2-510 reserved.

13-2-511. **TRANSFERRING REGISTRATION OR CHANGING NAME.** An elector shall notify the election administrator of a change in residence within the county or a change in name by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose.

13-2-512. **RIGHT TO VOTE WHEN PRECINCT OR NAME CHANGED.** (1) An elector who has changed his residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where he is registered at the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(2) An elector still residing in the same precinct where registered whose name has changed and who has failed to notify the election administrator of the change by a new registration form may vote under his former name at the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(3) The elector must state his correct residence address and name when offering to vote and must complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

13-2-513. **PROCEDURE FOR TRANSFERRING REGISTRATION.** The election administrator shall make the necessary corrections in the registration records in his office when he receives a transfer form or corrected registration form if he is satisfied the form is valid. The original registration form may be fastened to the back of the new form, in which case the original and current forms must be retained, or the original registration form may be marked "canceled" and filed in a canceled file.

13-2-514. **CHANGE OF RESIDENCE TO ANOTHER COUNTY.** (1) An elector who changes his residence to a different county within this state must register in his new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.

(2) An elector who changes his residence to a different county 45 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

(3) The elector must state his correct name and residence address and date of residence change when offering to vote or when applying for an absentee ballot. The election administrator shall note the information on the elector's registration form if an absentee ballot application is received. The election judges shall note the change of address and date of residence change in the precinct register if the elector votes in person.

(4) The registration of an elector who votes under the provisions of subsection (2) of this section shall be canceled after the election.

**13-2-515. INQUIRY AS TO PREVIOUS REGISTRATION -- NOTICES OF CHANGES.**

(1) The election administrator shall check each new registration to ascertain whether the elector has listed previous registration in another county of this state or another state. If the elector has been previously registered, the election administrator shall enter his name on a notice or may photocopy the registration form.

(2) At least once a week and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for counties in this state to the election administrator of the county where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

(3) Once a month and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for other states to the secretary of state or chief election official of the state where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

**Part 6**

**Effect of Registration**

**13-2-601. NAME ON PRECINCT REGISTER PRIMA FACIE EVIDENCE OF RIGHT TO VOTE.**

(1) An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) the name of an elector who has been assigned to vote in a precinct other than the precinct in which he is registered, as provided in 13-3-213 must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state. The fact that an elector's name appears on a special addendum to the precinct register is prima facie evidence of his right to vote in the precinct.

**13-2-602. JOINDER OF PARTIES IN PROCEEDINGS TO COMPEL ENTRY OF NAME IN REGISTER.** In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

13-2-603. **ERRONEOUS OMISSION OF NAME FROM PRECINCT REGISTER.** (1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator a certificate of the error, stating the precinct in which he is entitled to vote, and present the certificate which will entitle him to vote to the election judges.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

(3) If the elector's polling place is not located in the city where the election administrator's office is located, the elector may vote by signing an oath that his name was erroneously omitted if the election administrator can confirm such omission by telephone to the chief election judge of the precinct.

### CHAPTER 3

#### ELECTION PRECINCTS

##### **Part 1 -- Election Precincts**

###### **Section**

- 13-3-101. Establishment of election precincts.
- 13-3-102. Change of precinct boundaries.
- 13-3-103. Certification of boundary changes.
- 13-3-104. Precincts, wards, and election districts.
- 13-3-105. Designation of polling place.

##### **Part 2 -- Accessibility of Polling Places**

- 13-3-201. Purpose.
- 13-3-202. Definitions.
- 13-3-203. Duty of Secretary of State -- Rulemaking.
- 13-3-204. Exceptions.
- 13-3-205. Adoption of standards for polling place accessibility -- Rulemaking Authority.
- 13-3-206. Survey of polling places to determine accessibility -- procedures.
- 13-3-207. Polling place classifications.
- 13-3-208 through 13-3-210 reserved
- 13-3-211. Emergency Exemption.
- 13-3-212. Exemption if no polling place is available.
- 13-3-213. Alternative means for casting ballot.

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##### **Part 1**

##### **Election Precincts**

13-3-101. **ESTABLISHMENT OF ELECTION PRECINCTS.** (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

**13-3-102. CHANGE OF PRECINCT BOUNDARIES.** (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the 1972 Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan.

**13-3-103. CERTIFICATION OF BOUNDARY CHANGES.** (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall cause to be prepared and delivered to the election administrator a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.

**13-3-104. PRECINCTS, WARDS, AND ELECTION DISTRICTS.** (1) A ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

**13-3-105. DESIGNATION OF POLLING PLACE.** (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place shall be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the

county, a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

## Part 2

### Accessibility of Polling Places

**13-3-201. PURPOSE.** The purpose of this part is to promote the fundamental right to vote by improving access for handicapped and elderly individuals to polling places. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because no accessible polling place exists or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides handicapped and elderly voters an alternative means for casting a ballot on election day.

**13-3-202. DEFINITIONS.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" mean accessible to handicapped and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) "Elderly" means 65 years of age or older.

(3) "Election" means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(4) "Handicapped" means having a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired due to age, disability, or disease.

**13-3-203. DUTY OF SECRETARY OF STATE -- RULEMAKING.** (1) Except as provided in 13-3-204, the secretary of state shall assure that all polling places are accessible to handicapped and elderly electors on election day.

(2) The secretary of state shall adopt rules to establish standards that a polling place must meet in order to be designated accessible under this part.

(3) The secretary of state may adopt any other rules necessary for implementation of this part.

**13-3-204. EXCEPTIONS.** Section 13-3-203 does not apply to a polling place that:

- (1) is a rural polling place as defined in 13-3-207;
- (2) has been granted an emergency exemption as provided in 13-3-211; or
- (3) is declared exempt under 13-3-212 because no accessible polling place is available.

**13-3-205. ADOPTION OF STANDARDS FOR POLLING PLACE ACCESSIBILITY -- RULEMAKING AUTHORITY.** The secretary of state, with advice from election administrators and handicapped and elderly individuals, shall establish standards for accessibility of polling places. The standards, whenever possible, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.

**13-3-206. SURVEY OF POLLING PLACES TO DETERMINE ACCESSIBILITY -- PROCEDURES.**

(1) Except as provided in 13-3-207 and 13-3-211, the election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether such polling place meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel an elector would reasonable be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed and designated as accessible need not be surveyed again so long as the conditions of accessibility remain unchanged.

**13-3-207. POLLING PLACE CLASSIFICATIONS.** (1) As a result of the survey provided in 13-3-206, each polling place must be classified as:

- (a) accessible;
- (b) inaccessible;
- (c) technically inaccessible but usable; or
- (d) rural.

(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under 13-3-205.

(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.

(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated and certified as being adequate for use as a polling place. Such certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.

(5) A rural polling place is one that serves less than 200 registered electors and is:

(a) granted an exemption from the standards for accessibility established under 13-3-205, and

(b) subject to review and redesignation 45 days prior to an election.

(6) A rural designation may not be construed as cause for denying handicapped or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in 13-3-213.

13-3-208 through 13-3-210 reserved.

13-3-211. **EMERGENCY EXEMPTION.** (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place must be considered temporary and must be exempt from the survey procedures established under 13-3-206. However, such polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206.

13-3-212. **EXEMPTION IF NO ACCESSIBLE POLLING PLACE IS AVAILABLE.** (1) If an existing polling place has been surveyed and designated as being inaccessible, the election administrator shall make a reasonable effort to locate and survey all potential sites with comparable utility as a polling place.

(2) The election administrator shall request in writing to the secretary of state that an inaccessible polling place be exempt from the standards for accessibility if:

- (a) all potential polling places have been surveyed and it is determined that no accessible polling place is available; and
- (b) the county cannot safely or reasonably make a polling place temporarily accessible in the area involved.

(3) Nothing in this section may require an election administrator to select an accessible facility as a polling place if its location requires excessive travel or imposes other hardships for the majority of qualified electors in the precinct.

13-3-213. **ALTERNATIVE MEANS FOR CASTING BALLOT.** (1) The election administrator shall provide handicapped and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

- (a) delivery of a ballot to the elector as provided in 13-13-118;
- (b) voting by absentee ballot as provided in 13-13-222; and
- (c) prearranged assignment to an accessible polling place within the county.

(2) Any handicapped or elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

- (a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;
- (b) must be assigned to the nearest accessible polling place or technically inaccessible polling place for the purpose of voting in the election;
- (c) shall sign his name on a special addendum to the official precinct register as required in 13-2-601; and
- (d) shall receive the same ballot to which he is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.

**CHAPTER 4****ELECTION JUDGES****Part 1 -- Appointment****Section**

- 13-4-101. Appointment of election judges -- other boards of election judges.
- 13-4-102. Manner of choosing election judges.
- 13-4-103. Judges to serve until others appointed.
- 13-4-104. Election administrator to notify judges.
- 13-4-105. Oath of judges.
- 13-4-106. Compensation of judges.
- 13-4-107. Qualifications of election judges.

**Part 2 -- Functions**

- 13-4-201. Duties of chief election judge.
- 13-4-202. Administration of oaths.
- 13-4-203. Instruction of judges -- training materials.
- 13-4-204 through 13-4-206. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-4-207. Judges to remain at polls -- emergency provisions.

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**Part 1****Appointment**

**13-4-101. APPOINTMENT OF ELECTION JUDGES -- OTHER BOARDS OF ELECTION JUDGES.** (1) At least 30 days before the primary election in even-numbered years, the county governing body shall appoint 3 or more election judges for each precinct, one of whom shall be designated chief judge.

(2) A second board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator.

(3) A board of election judges, designated as a counting board for absentee ballots, may be appointed to count all absentee ballots for all precincts if recommended by the election administrator.

**13-4-102. MANNER OF CHOOSING ELECTION JUDGES.** (1) Election judges shall be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges shall be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges shall contain judges representing all parties that have submitted lists as provided in subsection (1). No more than a majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list,

the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2), or if the list is in sufficient, any qualified registered elector from the county may be appointed.

**13-4-103. JUDGES TO SERVE UNTIL OTHERS APPOINTED.** The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

**13-4-104. ELECTION ADMINISTRATOR TO NOTIFY JUDGES.** The election administrator must notify the judges of their appointment and of the time set for instruction sessions.

**13-4-105. OATH OF JUDGES.** Before votes are cast, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

**13-4-106. COMPENSATION OF JUDGES.** (1) Election judges shall be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions.

(2) The chief election judge may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for such certification are received.

**13-4-107. QUALIFICATIONS OF ELECTION JUDGES.** (1) Election judges shall be registered electors of the county and of the precinct in which they serve, except as provided in 13-4-102(4).

(2) No election judge may be a candidate or a spouse, ascendent, descendant, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

## Part 2

### Functions

**13-4-201. DUTIES OF CHIEF ELECTION JUDGE.** The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and shall be responsible for the return of all ballots and election supplies to the election administrator.

**13-4-202. ADMINISTRATION OF OATHS.** Any election judge may administer and certify oaths required during an election.

**13-4-203. INSTRUCTION OF JUDGES -- TRAINING MATERIALS.** (1) Before each election, all election judges who do not possess a current certificate of

instruction shall be instructed by the election administrator. In precincts where voting machines or devices are used, instructions shall cover both machines or devices and paper ballots.

(2) Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only.

(3) Any individual willing to be appointed an election judge may attend an instruction session by registering with the election administrator. Such individuals may not be paid for attendance unless they are appointed election judges.

(4) The secretary of state shall prepare and distribute training materials for election judges. The materials shall include instructions on the use of all machines or devices approved for use in this state, as well as paper ballots. Enough copies of the materials to supply all election judges in the county and provide a small extra supply shall be sent to each election administrator. The secretary of state shall hold at least one work shop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops shall be paid by the secretary of state.

(5) Each election judge completing a training session shall be given a certificate of completion. No individual may serve as an election judge without a valid certificate. However, this does not apply to individuals filling vacancies in emergencies.

(6) All certificates of completion expire 30 days before the primary election in even-numbered years.

(7) Notice of place and time of instruction must be given by the election administrator to the county chairmen of the political parties.

13-4-204. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-4-205. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-4-206. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-4-207. **JUDGES TO REMAIN AT POLLS -- EMERGENCY PROVISIONS.** (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

CHAPTER 10

PRIMARY ELECTIONS AND NOMINATIONS

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Section

13-10-101. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 2 -- Preprimary Procedures

13-10-201. Declaration for nomination.

13-10-202. Filing fees.

13-10-203. Indigent candidates.

13-10-204. Write-in nominations.

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13-10-206. Repealed. Sec. 407, Ch. 571, L. 1979.

13-10-207. Repealed. Sec. 407, Ch. 571, L. 1979.

13-10-208. Certificate of primary ballot -- printing ballot.

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13-10-301. Casting of ballot.

13-10-302. Write-in votes for previously nominated candidates.

13-10-303. Nominations by more than one party.

13-10-304. Repealed. Sec. 407, Ch. 571, L. 1979.

13-10-305. Independent forfeits place on ballot.

Sections 13-10-306 through 13-10-310 reserved.

13-10-311. Election judges' duties upon closing of polls.

13-10-312 through 13-10-321. Repealed. Sec. 407, Ch. 571, L. 1979.

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13-10-325. Withdrawal from nomination.

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**Part 6 -- Nominations by Political Parties**

13-10-601. Parties eligible for primary election -- petitions by minor parties.  
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13-10-603. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-10-604. Nominations for minor parties.

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**Part 1**

**General Provisions**

13-10-101. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

**Part 2**

**Preprimary Procedures**

13-10-201. **DECLARATION FOR NOMINATION.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination shall be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination shall be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(5) The declaration for nomination shall be in the form and contain the information prescribed by the secretary of state. The secretary of state and

election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination shall be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

**13-10-202. FILING FEES.** Filing fees are as follows:

- (1) for offices having an annual salary of \$2,500 or less and candidates for the legislature, \$15;
- (2) for county offices having an annual salary of more than \$2,500, 0.5% of the total annual salary;
- (3) for other offices having an annual salary of more than \$2,500, 1% of the total annual salary;
- (4) for offices in which compensation is paid in fees, \$10;
- (5) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required.

**13-10-203. INDIGENT CANDIDATES.** If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

- (1) from a successful write-in candidate, a verified statement that he is unable to pay the filing fee;
- (2) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:
  - (a) contains the name of the office to be filled and the candidate's name and residence address;
  - (b) contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;
  - (c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and
  - (d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304.

**13-10-204. WRITE-IN NOMINATIONS.** An individual nominated by having his name written in on the primary ballot and desiring to accept the nomination may not have his name printed on the general election ballot unless he:

- (1) files with the secretary of state or election administrator no later than 10 days after the official canvass, a written declaration indicating his acceptance of the nomination;
- (2) pays the required filing fee or, if indigent, complies with 13-10-203;
- (3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and
- (4) complies with the provisions of 13-37-126.

**13-10-205. REGISTER OF CANDIDATES.** The secretary of state and the election administrator may each keep a register of candidates who file with their respective offices. The register shall provide a complete record of the requisite information pertaining to all candidates in the primary and general election. Information on ballot issues may also be included in the register. The secretary of state may prepare and distribute a recommended format for the register.

13-10-206. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-10-207. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-10-208. **CERTIFICATE OF PRIMARY BALLOT -- PRINTING BALLOT.** (1) Not more than 75 days and not less than 67 days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of his office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of his office and have the official ballots printed in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

13-10-209. **ARRANGEMENT OF BALLOTS.** (1) (a) Ballots for a primary election shall be arranged and printed in the same manner and number as provided in chapter 12 for general election ballots, except there shall be separate ballots for each political party entitled to participate. The name of the political party shall be printed at the top of the separate ballot for that party and need not be printed opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be printed on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; and  
(ii) such nonpartisan offices and ballot issues appear on each party's ballot.

(2) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the offices on the ballot in even-year elections if no more than one candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify or instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(3) The separate ballots for each party shall be the same size and color. The stubs of each set of party ballots shall bear the same number. If printed as a separate ballot, the nonpartisan ballot shall be a different size or color than the party ballots, but the stubs shall be numbered in the same order as the party ballots.

(4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs shall be numbered in the same order.

(5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if such ballots are printed.

13-10-210. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

**Part 3****Primary Election Procedure**

**13-10-301. CASTING OF BALLOT.** (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures shall be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall mark only one of the set of party ballots. After marking any other ballots received other than the party ballots, the elector shall fold the marked and unmarked ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge.

(3) The elector shall hand the marked and unmarked ballots separately to the election judge, identifying them as marked and unmarked. If the judge determines the ballots may be voted, he shall, in the presence of the elector:

- (a) remove the stubs from all the ballots;
- (b) deposit the unmarked ballot or ballots and all the stubs in the stub and unmarked ballot box;
- (c) and deposit the marked ballots in the voted ballot box.

**13-10-302. WRITE-IN VOTES FOR PREVIOUSLY NOMINATED CANDIDATES.** If an elector writes the name of an individual upon a primary party ballot when the individual's name appears as a candidate for the same office on another party ballot, the vote shall count for the individual only as a candidate of the party upon whose ballot his name is written and the votes cast on the separate party ballots may not be added together.

**13-10-303. NOMINATIONS BY MORE THAN ONE PARTY.** If an individual is nominated by more than one party, he shall, not later than 10 days after the election, file written notification with the secretary of state or election administrator indicating the party under which his name is to appear upon the ballot for the general election. If he fails to notify the proper officers, his name shall appear under the party with whom his declaration for nomination was filed if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, his name shall be printed on the ballot without a party designation.

**13-10-304. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-10-305. INDEPENDENT FORFEITS PLACE ON BALLOT.** An individual who has filed as an independent candidate forfeits his place on the general election ballot as an independent candidate if he accepts a write-in nomination for an office as provided in 13-10-204.

**13-10-306 through 13-10-310 reserved.**

**13-10-311. ELECTION JUDGES' DUTIES UPON CLOSING OF POLLS.** (1) The election judges at the primary election shall separate the ballots for each political party and count each party's ballots separately.

(2) They shall reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations shall be handled as provided in 13-15-201(3).

(3) Each party's candidates shall be listed separately in the tally books.

(4) The voted ballots of each party shall be bundled separately for return to the election administrator. The unvoted ballots deposited in the stub box shall be bundled with the stubs.

**13-10-312 through 13-10-321. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-10-322 through 13-10-324 reserved.**

**13-10-325. WITHDRAWAL FROM NOMINATION.** (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than 75 days before an election.

(2) Filing fees paid by the candidate may not be refunded.

**13-10-326. VACANCY PRIOR TO PRIMARY ELECTION.** (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If the death or withdrawal occurs less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election. This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election.

**13-10-327. VACANCY AFTER PRIMARY AND PRIOR TO GENERAL ELECTION.** (1) If a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) Appointments to fill vacancies must be made no later than 65 days before the election. A candidate may not officially withdraw 75 days or less

before a general election. However, if a candidate for partisan office dies less than 75 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.

**13-10-328. VACANCY IN GOVERNOR OR LIEUTENANT GOVERNOR CANDIDACY.** The death or withdrawal of a candidate for governor or lieutenant governor does not affect the candidacy of the other joint candidate.

#### Part 4

##### Presidential Preference Primary

**13-10-401. (Contingent effective date-contingent upon establishment of Northwest regional preference primary by August 1, 1987.) DATE OF PRESIDENTIAL PRIMARY.** In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the election provided for in 20-20-105.

**13-10-401. DATE OF PRESIDENTIAL PRIMARY.** In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in 13-1-107.

**13-10-402. (Contingent effective date-contingent upon establishment of Northwest regional preference primary by August 1, 1987.) BALLOT.** Separate ballots for each political party shall be used for the presidential preference primary election.

**13-10-402. BALLOT.** The regular party primary ballots shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

**13-10-403. (Contingent effective date-contingent upon establishment of Northwest regional preference primary by August 1, 1987.) FORM OF BALLOT.** The presidential preference ballot for each political party shall list all candidates nominated in accordance with the provisions of this part and shall, in addition, include a presidential ballot position which shall be designated as "no preference" and a blank write-in space.

**13-10-403. FORM OF BALLOT.** The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this part and

shall, in addition, include a presidential ballot position which shall be designated as "no preference" and a blank write-in space.

**13-10-404. NOMINATION PETITION.** Before a presidential candidate may qualify for placement on the ballot, he must be nominated on petitions with the verified signatures of at least 1,000 qualified electors from each congressional district. The secretary of state is empowered to prescribe the form and content of the petition.

**13-10-405. SUBMISSION AND VERIFICATION OF PETITION.** Petitions of nomination for the presidential preference primary election must be presented to the election administrator of the county in which the signatures are gathered. The election administrator must verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state. The petitions must be submitted to the election administrator before the filing deadline established in 13-10-201(6). No filing fee is required.

**13-10-406.** Repealed Sec. 11, Ch. 65, L. 1987

**13-10-407. DELEGATES TO NATIONAL PRESIDENTIAL NOMINATING CONVENTIONS.** The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

**13-10-408. (Contingent effective date-contingent upon establishment of Northwest regional preference primary by August 1, 1987.) PRESIDENTIAL PREFERENCE PRIMARY ELECTION PROCEDURES.** (1) The polls for a presidential preference primary election must open no later than noon. The county election administrator may order the polls to open earlier, but no earlier than 7 a.m.

(2) Procedures for the close of voter registration for a presidential preference primary election must follow 13-2-301.

(3) The county election administrator may designate polling places for a presidential preference primary that differ from those designated for other county elections. Notice of the location of polling places must be given as provided in 13-3-105.

(4) For a presidential preference primary election, the election administrator shall appoint, under the provisions of 13-4-102(3), at least three election judges for each polling place. The judges may also serve for school elections and special district elections. The provisions of 13-4-105, 13-4-106, and 13-4-107 apply to the election judges for the presidential preference primary.

(5) Election day polling place procedures, absentee balloting, challenged ballot procedures, canvassing, and recount procedures for the presidential preference primary election must comply with the requirements of Title 13, except that presidential preference primary returns may be canvassed and reported by precinct or by polling place.

**13-10-409. (Contingent effective date-contingent upon establishment of Northwest regional preference primary by August 1, 1987) ARRANGEMENT OF NAMES.** The provisions of 13-12-205 do not apply to the presidential preference primary

ballot. An election administrator shall determine by lot the order of candidates' names on the ballot for that county.

## Part 5

### Methods of Nomination Other Than by Primary Election

**13-10-501. PETITION FOR NOMINATION BY INDEPENDENT CANDIDATES OR POLITICAL PARTIES NOT ELIGIBLE TO PARTICIPATE IN PRIMARY ELECTION.** (1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party which does not meet the requirements of 13-10-601 may be made by a petition for nomination.

(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.

(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle which such body represents.

(4) The form of the petition shall be prescribed by the secretary of state, and he shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county.

**13-10-502. SIGNATURE REQUIREMENTS FOR PETITION.** (1) The petition for nomination must be signed by electors residing within the state and district or political subdivision in which the officer or officers are to be elected. Each signature line must contain spaces for the signature, post-office address, and printed last name of the signer.

(2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the last general election.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the secretary of state shall determine the number of signatures required for a petition of nomination for that office.

**13-10-503. FILING DEADLINES.** (1) A petition for nomination, accompanied by the required filing fee, shall be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) Except as provided in 13-10-504, each petition shall be filed on or before the filing deadline for the primary election or for the special or general election if no primary election is scheduled.

**13-10-504. INDEPENDENT OR MINOR PARTY CANDIDATES FOR PRESIDENT OR VICE PRESIDENT.** (1) An individual who desires to run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 must file a petition for nomination with the secretary of state 90 days prior to the date of the general election.

(2) The petition must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election. The names of the candidates for the required number of presidential electors allowable to Montana shall be certified to the secretary of state when the petition for nomination is filed.

**13-10-505. APPLICABILITY.** The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except for nominations to fill a vacancy as provided in 13-25-205.

**13-10-506. REPEALED.** Sec. 407, Ch. 571, L. 1979.

## Part 6

### Nominations by Political Parties

**13-10-601. PARTIES ELIGIBLE FOR PRIMARY ELECTION -- PETITIONS BY MINOR PARTIES.** (1) Every political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor at the last general election shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state.

**13-10-602. USE OF PARTY NAME.** (1) Every political party and its regularly nominated candidates, members, and officers have the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(2) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

**13-10-603. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-10-604. NOMINATIONS FOR MINOR PARTIES.** Any political party that does not qualify under the provisions of 13-10-601 may make nominations for public office as provided in 13-10-501 through 13-10-505.

## CHAPTER 11

### ELECTION PROCLAMATION

(Sections 13-11-101 through 13-11-103 repealed.  
Sec. 407, Ch. 571, L. 1979)

## CHAPTER 12

### ELECTION SUPPLIES AND BALLOTS

#### **Part 1 -- Election Supplies**

##### Section

13-12-101. Copies of election laws to be furnished.  
13-12-102. Items to be furnished by election administrators.

13-12-103 through 13-12-105. Repealed. Sec. 407, Ch. 571, L. 1979.

#### **Part 2 -- Ballots**

13-12-201. Secretary of state to certify ballot.  
13-12-202. Ballot form and uniformity.  
13-12-203. Printing of candidate's name and party designation on ballot.  
13-12-204. Labels to be printed and distributed where vacancy has been filled.  
13-12-205. Arrangement of names -- rotation on ballot.  
13-12-206. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-12-207. Order of placement.  
13-12-208. Provision for write-in votes.  
13-12-209. Paper ballots -- stub size -- content.  
13-12-210. Number of ballots to be provided for each precinct.  
13-12-211. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-12-212. Election administrator to provide printed ballots -- other ballots prohibited.  
13-12-213. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-12-214. Sample ballots.

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Part 1

**Election Supplies**

**13-12-101. COPIES OF ELECTION LAWS TO BE FURNISHED.** (1) The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in his county with two copies and to provide a small extra supply for the administrator.

(2) The secretary of state shall, at the expense of the state, furnish the election administrator with copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections. The public official with whom a candidate files a declaration, petition, or acceptance of nomination shall transmit one copy to the candidate. A copy shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any elector, the secretary of state shall provide a copy to any other individual who is a candidate or who is required to make a statement required by this title.

**13-12-102. ITEMS TO BE FURNISHED BY ELECTION ADMINISTRATORS.** The election administrators shall deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots. The election administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".

**13-12-103. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-12-104. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-12-105. REPEALED.** Sec. 407, Ch. 571, L. 1979.

Part 2

**Ballots**

**13-12-201. SECRETARY OF STATE TO CERTIFY BALLOT.** (1) Seventy-five days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126, and shall have the official ballots printed.

**13-12-202. BALLOT FORM AND UNIFORMITY.** (1) The secretary of state shall prescribe the ballot form for all types of ballots used in this state.

(2) The names of all candidates printed upon the ballots shall be in type of the same size and character.

(3) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of every candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States shall appear on the ballot as provided in 13-25-101(2).

**13-12-203. PRINTING OF CANDIDATE'S NAME AND PARTY DESIGNATION ON BALLOT.**

(1) Except as provided in 13-10-209 and 13-10-303, in partisan elections, candidates' names shall be printed under the title of the office sought, with the name of the party, in not more than three words, or "Independent" printed opposite the name.

(2) In nonpartisan elections, the candidates' names shall be printed under the title of the office sought, with no description or designation printed with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates shall have printed with them the words "Nominated without party designation".

**13-12-204. LABELS TO BE PRINTED AND DISTRIBUTED WHERE VACANCY HAS BEEN FILLED.** (1) If an appointment has been made to replace a candidate as provided in 13-10-326 or 13-10-327 after the ballots have been printed but before the election, the election administrator shall order labels printed containing the name of the new nominee and any other information required to go on the ballot.

(2) The election administrator shall affix the labels in the proper place on each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot before it is given to the elector.

**13-12-205. ARRANGEMENT OF NAMES -- ROTATION ON BALLOT.** (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

(2)(a) Except as provided in subsection (3), if two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party shall be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names shall be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor shall be considered as a group.

(e) No more than one of the sets may be used in printing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

(3) In a precinct where voting devices are used, the election administrator need not rotate candidates' names as provided in subsection (2) on paper ballots required under 13-17-305; however, if more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots, the election administrator shall rotate candidates' names on the paper ballots. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot.

13-12-206. ~~REPEALED~~. Sec. 407, Ch. 571, L. 1979.

13-12-207. **ORDER OF PLACEMENT.** (1) The order on the ballot for state and national offices shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line shall be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party shall be grouped together.

(b) United States senator;

(c) United States representative;

(d) Governor and lieutenant governor;

(e) Secretary of state;

(f) Attorney general;

(g) State auditor;

(h) Public service commissioners;

(i) State superintendent of public instruction;

(j) Clerk of the supreme court;

(k) Chief justice of the supreme court;

(l) Justices of the supreme court;

(m) District court judges;

(n) State senators;

(o) Members of the house of representatives.

(2) The following order of placement shall be observed for county offices:

(a) clerk of the district court;

(b) county commissioner;

(c) county clerk and recorder;

(d) sheriff;

(e) coroner;

(f) county attorney;

(g) county superintendent of schools;

(h) county auditor;

(i) public administrator;

(j) county assessor;

(k) county treasurer;

(l) surveyor;

(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, consolidated, or confederated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments shall be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision shall follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they shall not be listed, but the order of the offices to be filled shall be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

**13-12-208. PROVISION FOR WRITE-IN VOTES.** Below the list of names of candidates for each office there must be as many blank spaces for write-in voting as there are officers to be elected.

**13-12-209. PAPER BALLOTS -- STUB SIZE -- CONTENT.** (1) Paper ballots shall be printed on the same sheet with a stub, separated by perforation.

(2) The stub shall extend the entire width of the ballot and have instructions printed on it.

(3) Upon the face of the stub shall be printed the following: This ballot should be marked with an "x" in the square before the name of each individual or candidate for whom the elector intends to vote. The elector may write in or affix a preprinted label in the blank spaces or over any other name, the name of an individual for whom he wishes to vote and vote by marking an "x" in the square before the name. If a ballot contains a constitutional amendment or other issue to be submitted to a vote of the people, it is voted on by marking an "x" in the square before the amendment or issue.

(4) On the stub shall be printed or stamped the consecutive number of the ballot, beginning with number 1 and increasing in regular numerical order to the total number of ballots required for the precinct.

**13-12-210. NUMBER OF BALLOTS TO BE PROVIDED FOR EACH PRECINCT.** (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in his office showing the exact number of ballots that are delivered to the election judges of each precinct.

**13-12-211. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-12-212. ELECTION ADMINISTRATOR TO PROVIDE PRINTED BALLOTS -- OTHER BALLOTS PROHIBITED.** Except as otherwise provided in the election laws of this state:

(1) the election administrator shall provide printed ballots for every election. He shall have printed on the ballot the names of all candidates for all offices to be filled at the election and the title and other wording required by law for all ballot issues.

**ELECTION PROCEDURES**

(2) ballots other than those printed by the election administrator may not be cast or counted in any election.

**13-12-213. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-12-214. SAMPLE BALLOTS.** The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

**CHAPTER 13****ELECTION PROCEDURE****Part 1 -- Procedure at Polling Place****Section**

13-13-101. Duties -- proclamation prior to opening and closing polls.

13-13-102 through 13-13-110. Repealed. Sec. 407, Ch. 571, L. 1979.

13-13-111. Provision and use of election booths, voting machines, or voting devices.

13-13-112. Display of instructions for electors.

13-13-113. Warning notice to be posted.

13-13-114. Marking precinct register book before elector votes.

13-13-115. Pollbooks.

13-13-116. Ballots to be stamped -- one ballot to elector.

13-13-117. Method of voting.

13-13-118. Taking ballot to disabled elector.

13-13-119. Aid to disabled elector.

13-13-120. Poll watchers -- announcement of elector's name.

13-13-121. Additional poll watchers.

13-13-122. Preventing obstructions.

**Part 2 -- Procedure for Electors  
Absent from the Polling Place**

13-13-201. Voting by absentee ballot -- qualifications.

13-13-202. Repealed. Sec. 407, Ch. 571, L. 1979.

13-13-203. Absentee ballots where voting machines or devices used.

13-13-204. Authority to vote in person -- printing error or ballot destroyed -- failure to receive ballot -- effect of absentee elector's death.

13-13-205. When ballots to be available.

Sections 13-13-206 through 13-13-210 reserved.

13-13-211. Application of absentee, chronically ill, or physically incapacitated elector for ballot -- special absentee ballot application.

13-13-212. Application for absentee ballot.

13-13-213. Transmission of application to election administrator -- delivery of ballot.

- 13-13-214. Mailing ballot to elector.  
Sections 13-13-215 through 13-13-220 reserved.
- 13-13-221. Marking and affirming ballot.
- 13-13-222. Voting before election day by prospective absentee, chronically ill, or physically incapacitated elector.  
Sections 13-13-223 through 13-13-224 reserved.
- 13-13-225. Special absentee election boards -- members -- appointment.
- 13-13-226. Manner of selection.
- 13-13-227. Oath of board members.
- 13-13-228. Compensation.
- 13-13-229. Voting performed before the special absentee election board.
- 13-13-230. Authorization to increase county mill levy.
- 13-13-231. Disposition of marked ballot upon receipt by election administrator.
- 13-13-232. Delivery of ballots to election judges -- ballots to be rejected.
- 13-13-233. Issue and record of absentee ballots -- certificate.
- 13-13-234. Duty of election judges -- pollbook.
- 13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.
- 13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.
- 13-13-237. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-13-238. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.
- 13-13-240. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-13-241. Examination of absentee ballot envelopes and affirmations while polls open.
- 13-13-242. Repealed. Sec. 20, Ch. 298, L. 1987.
- 13-13-243. Rejected absentee ballots.
- 13-13-244. Opening of envelopes after deposit.
- 13-13-245 through 13-13-270 reserved.
- 13-13-271. Federal write-in absentee ballot -- qualifications.
- 13-13-272. Procedure for voting federal write-in absentee ballot.
- 13-13-273. Counting of federal write-in absentee ballots.

**Part 3 -- Challenges**

- 13-13-301. Challenges on election day.
- 13-13-302. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-13-303. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-13-304. Duties of election judges in response to challenges.
- 13-13-305. Election judges' powers concerning challenges.
- 13-13-306. Proceedings pursuant to challenges -- oaths.
- 13-13-307. Determination of challenges.
- 13-13-308. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-13-309. Proceedings after determination of challenge.
- 13-13-310. List of challenges to be kept.
- 13-13-311. Vote by challenged elector.

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**Part 1****Procedure at Polling Place****13-13-101. DUTIES -- PROCLAMATION PRIOR TO OPENING AND CLOSING POLLS.**

(1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election.

**13-13-102 through 13-13-110. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-13-111. PROVISION AND USE OF ELECTION BOOTHS, VOTING MACHINES, OR VOTING DEVICES.** (1) The election administrator shall provide a sufficient number of booths, voting machines, or voting devices to allow voting to proceed with as little delay as possible. Booths, voting machines, or voting devices must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted, and the election judges may not permit any individual to remain in any position that would allow him to see how the elector votes or has voted.

(2) No more than one individual may occupy a booth at one time except when assistance is furnished an elector as provided by law. No individual may occupy a booth or use a voting machine or device longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

**13-13-112. DISPLAY OF INSTRUCTIONS FOR ELECTORS.** (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain how to:

- (a) obtain ballots for voting;
- (b) prepare ballots for deposit in the ballot box; and
- (c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, shall be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices.

13-13-113. **WARNING NOTICE TO BE POSTED.** Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

13-13-114. **MARKING PRECINCT REGISTER BOOK BEFORE ELECTOR VOTES.** (1) Before an elector is permitted to receive a ballot or vote, he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his name and current address. If the name or address is not as listed in the precinct register, the elector must complete a transfer form or new registration form to correct the information. The election judges shall write "transfer form" or "registration form" beside the name of any elector submitting a form. No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.

(2) The election judges shall require an elector not able to sign his name to produce two electors who shall sign an affidavit stating that the elector is the individual whose name and address appears in the precinct register before one or more of the election judges on a form prescribed by the secretary of state. The affidavit shall be filed by the election judges and returned to the election administrator with the returns of the election. One of the judges shall write the elector's name, noting the fact of his inability to sign, and the names of the two electors signing the affidavit.

(3) If the elector fails or refuses to sign his name or, if unable to write, fails to procure two electors who will take the oath required, he may not vote.

13-13-115. **POLLBOOKS.** (1) In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector.

(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting.

13-13-116. **BALLOTS TO BE STAMPED -- ONE BALLOT TO ELECTOR.** (1) Before delivering ballots to an elector, the election judges shall stamp the words "official ballot" on the ballot. No part of the stamp may appear on the stub. They shall also stamp the name of the county, the number of the precinct, the date of the election, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector shall receive from the election judges one of each type of ballot being used at the election.

13-13-117. **METHOD OF VOTING.** (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.

(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.

(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector.

(5) An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall mark his ballot in the manner prescribed on his ballot. However, his ballot must not be invalidated if he marks the voting positions with an "x".

(6) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.

(7) The judge receiving the ballots shall remove the stubs insight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge must place the ballots in the ballot box immediately without opening or examining them.

(8) No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

(9) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

**13-13-118. TAKING BALLOT TO DISABLED ELECTOR.** (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking his ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating he is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce he has "a ballot offered by ..... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If no objection is heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote shall be resolved as provided in Title 13, chapter 13, part 3.

**13-13-119. AID TO DISABLED ELECTOR.** (1) The election judges or an individual chosen by the disabled elector as specified in subsection (4) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The election judges shall require the declaration of disability by the elector to be under oath and may administer the oath.

(3) The elector may be assisted by two judges who represent different parties. The judges must certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(4) Instead of assistance as provided in subsection (3), the elector may request the assistance of any individual whom he designates to the judges to aid him in the marking of his ballot, and the individual chosen shall sign his name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of his employer, or an officer or agent of the elector's union.

(5) No elector other than the one who requires assistance may divulge to anyone within the polling place the name of any candidate for whom he intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of his ballot.

**13-13-120. POLL WATCHERS -- ANNOUNCEMENT OF ELECTOR'S NAME.** The election judges shall permit one poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs his name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

**13-13-121. ADDITIONAL POLL WATCHERS.** A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

**13-13-122. PREVENTING OBSTRUCTIONS.** An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

## Part 2

### Procedure for Electors Absent from the Polling Place

**13-13-201. VOTING BY ABSENTEE BALLOT -- QUALIFICATIONS.** A qualified registered elector is entitled to vote by absentee ballot, as provided in this part, if the elector:

(1) expects to be absent from the county or precinct and unable to vote in person at the time of holding the election;

(2) is physically incapacitated and unable to go to the polls on election day;

(3) suffers from chronic illness or general ill health; or

(4) is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day. Such health emergency must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.

**13-13-202. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-13-203. ABSENTEE BALLOTS WHERE VOTING MACHINES OR DEVICES USED.** (1) In precincts where voting machines or devices are used, the election administrator shall if necessary print and provide:

- (a) ballots in official form for qualified electors who may vote absentee as provided in 13-13-201; and
- (b) ballot boxes required for precincts in which printed ballots are used.
- (2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

**13-13-204. AUTHORITY TO VOTE IN PERSON -- PRINTING ERROR OR BALLOT DESTROYED -- FAILURE TO RECEIVE BALLOT -- EFFECT OF ABSENTEE ELECTOR'S DEATH.**

(1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, the elector may vote in person in any manner at his polling place.

(2) If an elector does not receive his absentee ballot or if the absentee ballot was destroyed, he may appear at his polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that his ballot has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the court to have been wrongfully or illegally voted.

(3) If an elector votes by absentee ballot and dies between the time of balloting and election day, his ballot does not count.

**13-13-205. WHEN BALLOTS TO BE AVAILABLE.** (1) The election administrator shall ensure that ballots are printed and available for absentee voting at least 45 days prior to an election for those elections held in compliance with 13-1-104(1) and 13-1-107(1).

(2) for elections held in compliance with 13-1-104(2) and (3), and 13-1-107(2), the election administrator shall ensure that ballots are printed and available for absentee voting at least 20 days prior to an election.

**13-13-206 through 13-13-210 reserved.**

**13-13-211. APPLICATION OF ABSENTEE, CHRONICALLY ILL, HANDICAPPED, ELDERLY, OR PHYSICALLY INCAPACITATED ELECTOR FOR BALLOT -- SPECIAL ABSENTEE BALLOT APPLICATION.** (1) Except as provided in 13-2-214, during a period beginning 75 days before the day of election and ending at noon on the day before the election, an individual may apply to the election administrator for an absentee ballot if he is:

- (a) an elector expecting to be absent from the county in which his voting precinct is situated;
- (b) an elector who is chronically ill or in general ill health;
- (c) a handicapped or elderly elector who has been assigned to an inaccessible polling place; or
- (d) an elector who will be unable to go to the polls because of physical incapacity.

(2) A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day may request to vote by absentee ballot. The election administrator shall honor any such request received up to

and including noon on election day. The election administrator is not required to comply with a request by an elector who is absent from the county.

**13-13-212. APPLICATION FOR ABSENTEE BALLOT.** (1) Application for absentee ballots shall be made by a written request signed by the applicant and addressed to the election administrator of the applicant's county of residence.

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant and addressed to the election administrator of the applicant's county of residence.

(3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time the ballot is delivered in person by the special absentee election board provided for in section 13-13-225. Such elector may request by telephone or other means to have a ballot and application personally delivered to him by the special absentee election board at his place of confinement, hospitalization, or residence within the county. Such a request may be made no later than noon on election day.

**13-13-213. TRANSMISSION OF APPLICATION TO ELECTION ADMINISTRATOR - DELIVERY OF BALLOT.** (1) Except as provided in subsection (2), the elector shall forward the application by mail or deliver it in person to the election administrator. The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

(2) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector.

**13-13-214. MAILING BALLOT TO ELECTOR.** (1) As soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom he has received a valid application whatever official ballots are necessary. Ballots shall be sent immediately to electors submitting valid requests after the official ballots are printed.

(2) The election administrator shall enclose with the ballots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state shall be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots sent to an absentee elector as provided in 13-13-116.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face such information and graphics and be of such color as may be prescribed by the secretary of state consistent with the regulations established by the federal election commission, U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so it can be identified as being used by any one elector.

(6) Instructions for voting shall be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

(7) The return envelope shall be self-addressed to the election administrator.

13-13-215 through 13-13-220 reserved.

**13-13-221. MARKING AND AFFIRMING BALLOT.** (1) After the elector marks his ballots, he shall fold them so that the vote is concealed and so that the official stamp is visible. The stubs shall be left attached and the ballots should be folded so that the stubs can be detached without revealing the vote.

(2) The elector shall place the ballots in the envelope addressed to the election administrator and seal it securely. If the ballots are for a primary election, the party ballot or ballots not voted shall be placed in the envelope marked for that purpose and enclosed in the outer envelope with the voted ballots.

(3) The elector shall complete and sign the affirmation on the envelope.

(4) The elector shall mail the envelope, postage prepaid, or deliver it to the election administrator or a special absentee election board.

**13-13-222. VOTING BEFORE ELECTION DAY BY PROSPECTIVE ABSENTEE, CHRONICALLY ILL, OR PHYSICALLY INCAPACITATED ELECTOR.** (1) As soon as the official ballots are available, the election administrator shall permit an elector who is present in his county and who has reason to believe that he will be absent from the county, ill, or physically incapacitated on election day to vote before election day before the election administrator.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the election administrator, he shall deal with it in the same manner as if it had come by mail.

13-13-223 through 13-13-224 reserved.

**13-13-225. SPECIAL ABSENTEE ELECTION BOARDS -- MEMBERS -- APPOINTMENT.** (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot under 13-13-201(4).

(2) In a partisan election, each special absentee election board shall consist of two members, one from each of the two political parties receiving the highest votes in the state during the last preceding general election. Board members must reside in the county in which they serve.

(3) No member of a special absentee election board may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county.

**13-13-226. MANNER OF SELECTION.** The election administrator shall make appointments to the special absentee election board from lists of qualified electors prepared in substantially the same manner as provided in 13-4-102. If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county. The election administrator may refuse for cause to appoint or may for cause remove a member of a special absentee election board.

**13-13-227. OATH OF BOARD MEMBERS.** Before assuming any of his responsibilities under this chapter, each member of a special absentee election board must take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105.

**13-13-228. COMPENSATION.** (1) Each member of a special absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of a special absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1).

**13-13-229. VOTING PERFORMED BEFORE THE SPECIAL ABSENTEE ELECTION BOARD.** (1) As provided in 13-13-201(4), a qualified elector who becomes ill or is prevented from voting at the polls because of a health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), such elector may request that a special absentee election board personally deliver a ballot to him.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-221, except the elector must hand the marked ballot in the sealed envelope to the special absentee election board, and the board must deliver the sealed envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking his ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any such assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119.

**13-13-230. AUTHORIZATION TO INCREASE COUNTY MILL LEVY.** Each county may levy an amount not exceeding 1 mill as may be necessary to finance the additional cost of administering a special absentee election board program pursuant to 13-13-225 through 13-13-229. Such mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by sections 13-13-225 through 13-13-229.

**13-13-231. DISPOSITION OF MARKED BALLOT UPON RECEIPT BY ELECTION ADMINISTRATOR.** (1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in his office until delivered by him.

**13-13-232. DELIVERY OF BALLOTS TO ELECTION JUDGES -- BALLOTS TO BE REJECTED.** (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall deliver the envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the envelopes to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not received as required by 13-13-211, or if an absentee ballot is received by the election administrator after the close of the polls and was not issued to an elector pursuant to 13-13-201(4), the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots so endorsed shall be retained by the election administrator and placed with the proper records when they are returned to him.

**13-13-233. ISSUE AND RECORD OF ABSENTEE BALLOTS -- CERTIFICATE.** (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The election administrator shall deliver to the chief election judges to whom the ballots are delivered a certificate stating:

(a) the number of absentee ballots delivered as well as those marked before him;

(b) the number of ballots retained for late absentee voting; and

(c) the names of the electors to whom such ballots were delivered or by whom they have been marked if marked before him.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

**13-13-234. DUTY OF ELECTION JUDGES -- POLLBOOK.** (1) The election judges, at the opening of the polls, shall note on the pollbook opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent, chronically ill, or physically incapacitated electors, as well as those electors prevented from voting at the polls because of a sudden illness or health emergency.

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate of the election administrator and the number of his ballot.

13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.

13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.

13-13-237. Repealed. Sec. 407, Ch. 571, L. 1979.

13-13-238. Repealed. Sec. 407, Ch. 571, L. 1979.

13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.

13-13-240. Repealed. Sec. 407, Ch. 571, L. 1979.

13-13-241. **EXAMINATION OF ABSENTEE BALLOT ENVELOPES AND AFFIRMATIONS WHILE POLLS OPEN -- DEPOSIT OF ABSENTEE AND UNVOTED BALLOTS.** (1) While the polls are open, the election judges may compare the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot envelope.

(2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason for rejection, and a majority of the judges shall sign their initials. Unopened rejected absentee ballot envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

(3) After opening the absentee envelope and without unfolding the ballots or permitting them to be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelope.

(4) If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election administrator, the ballot must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a majority of the election judges.

13-13-242. Repealed. Sec. 20, Ch. 298, L. 1987.

13-13-243. **REJECTED ABSENTEE BALLOTS.** (1) The rejected ballots, the applications, and all envelopes shall be enclosed in an envelope and sealed, and the judges shall write on the envelope "rejected ballot(s) of absentee elector" (writing in the elector's name).

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be marked "voted in person" and initialed by a majority of the election judges.

(3) The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.

(4) All rejected ballots shall be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order.

**13-13-244. OPENING OF ENVELOPES AFTER DEPOSIT.** If an envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the envelope shall be opened without a court order and the ballot cast.

13-13-245 through 13-13-270 reserved.

**13-13-271. FEDERAL WRITE-IN ABSENTEE BALLOT -- QUALIFICATIONS** (1) An elector qualified by 13-2-211 who fears his regular absentee ballot might not arrive in time to vote and return to the election administrator of the county of his residence and registration may also vote a federal write-in absentee ballot.

(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.

(3) The elector shall apply for a regular absentee ballot as provided in 13-13-212(2) not less than 30 days before the general election.

**13-13-272. PROCEDURE FOR VOTING FEDERAL WRITE-IN ABSENTEE BALLOT.** (1) An elector voting a federal write-in ballot may designate a candidate by writing in the name of the candidate or by writing in the name of the political party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) If an elector receives his regular absentee ballot after he has voted and mailed a federal write-in absentee ballot, he may vote and return the regular absentee ballot.

**13-13-273. COUNTING OF FEDERAL WRITE-IN ABSENTEE BALLOTS.** (1) A federal write-in absentee ballot shall be counted if:

(a) the condition in 13-13-271(3) has been met;  
(b) the regular absentee ballot has not been received by 8 p.m. election day;  
(c) it has not been submitted from any location within the continental United States, Alaska, Hawaii or Guam; and  
(d) it is received by 8 p.m. election day.

(2) Federal write-in absentee ballots received before the close of the polls election day will not be counted until the polls have closed.

### Part 3

#### Challenges

**13-13-301. CHALLENGES ON ELECTION DAY.** (1) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(2) An individual offering to vote may be orally challenged by any elector of the county upon the following grounds:

- (a) that he is not the individual whose name appears on the register;
- (b) that he does not reside at the residence listed unless the elector is voting under the provisions of 13-2-512 and 13-2-514;
- (c) that he is of unsound mind, as determined by a court;
- (d) that he has voted before in that election; or
- (e) that he has been convicted of a felony and is serving a sentence in a penal institution.

13-13-302. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-13-303. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-13-304. **DUTIES OF ELECTION JUDGES IN RESPONSE TO CHALLENGES.** The election judges shall:

- (1) test the qualifications of the elector challenged under oath if he applies to vote;
- (2) compare the answers of the elector with the entries in the precinct register; and
- (3) not permit him to vote if the elector:
  - (a) is found to be disqualified because the answers given do not correspond to the entry in the precinct register or any transfer form or registration form submitted by the elector;
  - (b) is disqualified for any cause under the law;
  - (c) refuses to be sworn and to answer questions touching the matter of residence; or
  - (d) refuses to take an oath or affirmation as to his qualifications.

13-13-305. **ELECTION JUDGES' POWERS CONCERNING CHALLENGES.** The election judges may require the challenged elector to produce one or more electors of the county to be examined under oath as to the qualifications of the challenged elector and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

13-13-306. **PROCEEDINGS PURSUANT TO CHALLENGES -- OATHS.** (1) If the challenge is on the ground that the individual is not the elector whose name appears on the official register, the election judges shall administer the following oath: "I, ..... (name of elector), do swear (or affirm) that I am the individual whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the individual does not reside at the residence listed, the judges shall administer this oath: "I, ..... (name of elector), do swear (or affirm) that I reside at ..... (state precise address), which is the address listed on the official register."

(3) If the challenge is on the ground that the individual has voted before in that election, the judges shall administer this oath: "I, ..... (name of elector), do swear (or affirm) that I have not voted before in this election."

(4) If the challenge is on the ground that the individual has been convicted of a felony and is serving a sentence in a penal institution, the judges shall administer the following oath: "I, ..... (name of elector), do swear (or affirm) either that I have not been convicted of a felony or that, if

I have been convicted of a felony, I am not serving a sentence in a penal institution."

(5) The election judges may administer any other oath relating to the individual's qualification to vote that they feel necessary.

**13-13-307. DETERMINATION OF CHALLENGES.** Challenges are determined in favor of the individual challenged by his taking the oath tendered.

**13-13-308. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-13-309. PROCEEDINGS AFTER DETERMINATION OF CHALLENGE.** If the challenge is determined against the individual offering to vote, the individual may not be allowed to receive a ballot or vote by any other means and the precinct register shall be so marked. If determined in favor of the individual offering to vote, he shall be allowed to vote.

**13-13-310. LIST OF CHALLENGES TO BE KEPT.** The election judges shall keep a list showing:

- (1) the names of all individuals challenged;
- (2) the name of the elector or judge offering the challenge, if known;
- (3) the grounds of each challenge;
- (4) the determination of the election judges upon the challenge.

**13-13-311. VOTE BY CHALLENGED ELECTOR.** (1) Whenever an individual's right to vote at an election is challenged under 13-2-404 or 13-13-301 and the challenge has been determined in favor of the individual challenged as provided in 13-13-307, an election judge shall write in the pollbook at the end of the individual's name the words "challenged and sworn", with the name of the challenger, if known. The elector so challenged must be allowed to vote. The election judge shall then write upon the back of the ballot offered by the challenged elector the number of his ballot. The ballot may be cast out if it appears to the court to have been for any reason wrongfully or illegally voted.

(2) Placing information on a ballot or pollbook under the provisions of subsection (1) or of 13-13-204(2) or divulging such information in a legal proceeding subsequent to the election does not constitute a violation of 13-35-202 or 13-35-207.

## CHAPTER 14

### NONPARTISAN ELECTIONS

#### Part 1 -- General Provisions

##### Section

13-14-101 through 13-14-104. Repealed. Sec. 407, Ch. 571, L. 1979.

Sections 13-14-105 through 13-14-110 reserved.

13-14-111. Application of general laws.

13-14-112. Declarations for nomination -- fee.

13-14-113. Filing for offices without salary or fees.

13-14-114. Register of candidates.

13-14-115. Preparation and distribution of nonpartisan primary ballots.

13-14-116. Counting and canvassing of nonpartisan ballots.  
13-14-117. Placing names on ballots for general election.  
13-14-118. Vacancies among nominees after nomination and before general election.

#### Part 2 -- Judicial Offices

13-14-201 through 13-14-208. Repealed. Sec. 407, Ch. 571, L. 1979.  
Sections 13-14-209 and 13-14-210 reserved.  
13-14-211. Judicial offices separate and independent offices for election purposes.  
13-14-212. Form of ballot on retention of certain incumbent judicial officers.  
13-14-213. Form of ballot on retention of other judicial offices.

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#### Part 1

##### General Provisions

13-14-101 through 13-14-104. REPEALED. Sec. 407, Ch. 571, L. 1979.

13-14-105 through 13-14-110 reserved.

13-14-111. **APPLICATION OF GENERAL LAWS.** Candidates for nonpartisan offices, including judicial offices, shall be nominated and elected according to the provisions of this title except as otherwise provided in this chapter.

13-14-112. **DECLARATIONS FOR NOMINATION -- FEE.** (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113.

(2) Declarations may not indicate political affiliation. The candidate may not state in his declaration any principles or measures he advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position he seeks.

(4) Declarations shall be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing shall be the same as provided in 13-10-201.

13-14-113. **FILING FOR OFFICES WITHOUT SALARY OR FEES.** (1) Candidates for nonpartisan offices for which no salary or fees are paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but in no case may it be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election shall be determined by the secretary of state.

(4) Petitions for nomination shall be filed at the same time provided in 13-10-201 for other candidates and offices.

**13-14-114. REGISTER OF CANDIDATES.** On receipt of a declaration or petition, the secretary of state or election administrator shall, if a register is kept, make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

**13-14-115. PREPARATION AND DISTRIBUTION OF NONPARTISAN PRIMARY BALLOTS.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". They shall be arranged as other primary ballots and be without political designation.

(2) The number of nonpartisan primary ballots and sample ballots furnished shall be the same as other primary ballots.

(3) The governing body of a political subdivision may determine that a primary need not be held if:

(a) the number of candidates for an office exceeds twice the number to be elected to that office in no more than one-half of the offices on the ballot;

(b) the number of candidates in excess of twice the number to be elected is not more than one for any office on the ballot; and

(c) the governing body passes a resolution not more than 7 days after the close of filing by candidates for election stating that a primary election need not be held.

**13-14-116. COUNTING AND CANVASSING OF NONPARTISAN BALLOTS.** (1) After closing the polls, the election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the number of votes cast for each person.

(2) Nonpartisan ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns shall be made as provided by law.

**13-14-117. PLACING NAMES ON BALLOTS FOR GENERAL ELECTION.** Candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

**13-14-118. VACANCIES AMONG NOMINEES AFTER NOMINATION AND BEFORE GENERAL ELECTION.** (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office shall be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) shall be certified and printed on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and no qualified individual is elected to the office at the general election, the office shall be vacant and shall be filled as provided by law.

## Part 2

### Judicial Offices

13-14-201 through 13-14-208. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-14-209 and 13-14-210 reserved.

13-14-211. **JUDICIAL OFFICES SEPARATE AND INDEPENDENT OFFICES FOR ELECTION PURPOSES.** (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district which has more than one district judge is a separate and independent office for election purposes.

(3) Each vacancy for office in a county which has more than one justice of the peace is a separate and independent office for election purposes.

13-14-212. **FORM OF BALLOT ON RETENTION OF CERTAIN INCUMBENT JUDICIAL OFFICERS.** In the event there is no candidate other than the incumbent for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

YES

NO

(Mark an "x" before the word "YES" if you wish the official to remain in office. Mark an "x" before the word "NO" if you do not wish the official to remain in office.)

13-14-213. **FORM OF BALLOT ON RETENTION FOR OTHER JUDICIAL OFFICES.** The election administrator or secretary of state shall use the form prescribed in

**CANVASSING, RETURNS, AND CERTIFICATES**

13-14-212 to place the name of an unopposed incumbent for a judicial office on the general election ballot if such office is subject to the provisions of Article VII, Section 8, of The Constitution of the State of Montana.

**CHAPTER 15****CANVASSING, RETURNS, AND CERTIFICATES****Part 1 -- General Provisions****Section**

- 13-15-101. Votes to be publicly counted upon closing of polls.
- 13-15-102. Defect in form of returns to be disregarded.
- 13-15-103. Counting board.
- 13-15-104. Counting board for absentee ballots.
- 13-15-105. Notices relating to counting board for absentee ballots.
- 13-15-106 through 13-15-110 reserved.
- 13-15-111. Write-in elections -- general elections.

**Part 2 -- Procedure for Canvass**

- 13-15-201. Preparation for count.
- 13-15-202. Counting votes cast -- pollbook.
- 13-15-203. Marking rejected ballots.
- 13-15-204. Signing and certifying pollbook.
- 13-15-205. Items to be delivered to election administrator by election judges - disposition of other items.

**Part 3 -- Registrar's Duties**

- 13-15-301. Disposition of items by election administrator.
- 13-15-302. Repealed. Sec. 407, Ch. 571, L. 1979.

**Part 4 -- County Canvass**

- 13-15-401. County governing body as board of county canvassers.
- 13-15-402. Canvass of votes by board -- procedures if all returns not received by time of canvass.
- 13-15-403. Canvass to be public -- nonessentials to be disregarded -- petition for recount.
- 13-15-404. Information to be entered on record.
- 13-15-405. Declaration or certification of results.
- 13-15-406. Certificates to be issued by the election administrator.

**Part 5 -- State Canvass**

- 13-15-501. Certification of canvass to state canvassers.
- 13-15-502. Composition and meeting of board of state canvassers.
- 13-15-503. Notification if returns not received from counties.
- 13-15-504. Governor to issue commissions.
- 13-15-505. Canvass to be public -- procedure.

13-15-506. Report of the canvass.

13-15-507. Declaration, proclamation, and certification of results.

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Part 1

General Provisions

**13-15-101. VOTES TO BE PUBLICLY COUNTED UPON CLOSING OF POLLS.** (1) When the polls are closed, the election judges shall immediately count the votes. The count shall be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms shall be signed by all the election judges completing the count.

**13-15-102. DEFECT IN FORM OF RETURNS TO BE DISREGARDED.** No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

**13-15-103. COUNTING BOARD.** (1) In any precinct where a counting board has been appointed in addition to the regular board of election judges, the counting board shall meet at a place designated by the election administrator.

(2) The election administrator may provide duplicate boxes for voted ballots and duplicate pollbooks at any precinct for which a counting board has been appointed and may arrange for the counting board to begin the count of the votes cast before the polls close. The counting board shall be sequestered in a separate room from where the ballots are being cast until after the polls close. Any individual observing the counting board procedures must be sequestered with the board until after the polls close. The counting board shall proceed by counting all ballots in the first box and then that box and pollbook shall be exchanged for the second box and duplicate pollbook. The board shall continue counting until the votes cast for all candidates and issues are counted. The election administrator may appoint an extra election judge to act as a marshal to be responsible for exchanging ballot boxes and pollbooks and enforcing sequestering of the board and observers.

(3) The election administrator may have the counting board for a precinct begin work as soon as the polls close instead of using the procedure outlined in subsection (2).

(4) In a county where voting devices are used, the election administrator may make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls. The ballots may be processed and counted as they are received, but the results of this early count may not be released to the public until after all the polls are closed.

(5) No election judge or other individual having access to the information may disclose any results of early counting while the polls are open.

**13-15-104. COUNTING BOARD FOR ABSENTEE BALLOTS.** (1) The election administrator shall:

(a) give special instructions to any counting board for absentee ballots appointed under 13-4-101 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The counting board for absentee ballots shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-103 for the counting of the votes cast.

(3) No election judge or other individual having access to any results of early counting may disclose the information while the polls are open, and he must remain sequestered until the closing of the polls.

(4) (a) In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots shall complete and sign the following affirmation: "I, ...., will not discuss or disclose or allow anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation.

**13-15-105. NOTICES RELATING TO COUNTING BOARD FOR ABSENTEE BALLOTS.** Whenever a counting board for absentee ballots is appointed under 13-4-101, the election administrator shall:

(1) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating that such a method will be used for counting absentee ballots;

(2) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time the counting board for absentee ballots will meet on election day. The notice must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and the counting board is released and must take the oath provided in 13-15-104.

**13-15-106 through 13-15-110 reserved.**

**13-15-111. WRITE-IN ELECTIONS -- GENERAL ELECTION.** (1) An individual elected by having his name written in at the general election and receiving the largest number of votes shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating his acceptance of the position for which he was elected; and

(b) comply with the provisions of 13-37-225.

(2) If an individual fails to file the declaration as required under subsection (1)(a), he may not assume the position for which he was elected.

## Part 2

## Procedure for Canvass

**13-15-201. PREPARATION FOR COUNT.** (1) To begin the count after the close of the polls, the election judges shall take ballots out of the box unopened to determine whether each ballot is single.

(2) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbook.

(3) If they cannot reconcile the total number of ballots with the pollbook they must submit a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. All judges must sign the report.

(4) A ballot which is not endorsed by the official stamp is void and may not be counted unless the judges agree the stamp is missing because of their error. Such ballot shall be marked "unstamped by error" on the back and must be initialed by all judges.

(5) If two or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, they must be rejected; otherwise they must be counted.

**13-15-202. COUNTING VOTES CAST -- POLLBOOK.** (1) When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual.

(2) In counting, the ballots shall be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(4) As the ballots are read, two judges must write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual.

(5) The tally sheets shall be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

- (a) the names of all individuals who received votes;
- (b) the offices for which they received votes;

(c) total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count.

**13-15-203. MARKING REJECTED BALLOTS.** A ballot rejected for illegality shall be marked by the election judges by writing across the face, "rejected on the ground of ....", filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

**13-15-204. SIGNING AND CERTIFYING POLLBOOK.** Immediately after the votes are counted and the ballots sealed up, the pollbook shall be signed and certified to by the election judges in a form prescribed by the secretary of state.

**13-15-205. ITEMS TO BE DELIVERED TO ELECTION ADMINISTRATOR BY ELECTION JUDGES -- DISPOSITION OF OTHER ITEMS.** (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

- (a) the precinct register;
- (b) the list of individuals challenged;
- (c) the pollbook;
- (d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope shall be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots shall be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write his name across all seals.

(5) The return form provided for in 13-15-101 shall be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section shall be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies.

### Part 3

#### Registrar's Duties

**13-15-301. DISPOSITION OF ITEMS BY ELECTION ADMINISTRATOR.** (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. He shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and the papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs.

**13-15-302. REPEALED.** Sec. 407, Ch. 571, L. 1979.

## Part 4

## County Canvass

**13-15-401. COUNTY GOVERNING BODY AS BOARD OF COUNTY CANVASSERS.** (1) The governing body of a county, consolidated, or confederated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 days after each election, at 8 a.m., to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, his place shall be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county, consolidated, or confederated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of his office.

**13-15-402. CANVASS OF VOTES BY BOARD -- PROCEDURES IF ALL RETURNS NOT RECEIVED BY TIME OF CANVASS.** (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 days after an election, he shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.

**13-15-403. CANVASS TO BE PUBLIC -- NONESSENTIALS TO BE DISREGARDED -- PETITION FOR RECOUNT.** (1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201.

**13-15-404. INFORMATION TO BE ENTERED ON RECORD.** (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections; the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as the votes for other individuals for the same office but shall be identified as write-in votes.

**13-15-405. DECLARATION OR CERTIFICATION OF RESULTS.** (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

**13-15-406. CERTIFICATES TO BE ISSUED BY THE ELECTION ADMINISTRATOR.** The election administrator shall, except as provided in 13-37-127, deliver a certificate of nomination or election to each individual declared elected by the board.

## Part 5

### State Canvass

**13-15-501. CERTIFICATION OF CANVASS TO STATE CANVASSERS.** (1) The board of county canvassers shall certify the vote for each individual for whom votes were cast for the offices of president and vice president of the United States, congressional offices, state or district offices voted for in more than one county, members of the legislature, judges of the district court, and for and against ballot issues voted on in more than one county to the board of state canvassers. The certification shall contain all the information required in 13-15-404 for such candidates and issues.

(2) The secretary of the board shall send the certification to the secretary of state by certified mail in an envelope marked "election returns".

**13-15-502. COMPOSITION AND MEETING OF BOARD OF STATE CANVASSERS.** Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of his office.

**13-15-503. NOTIFICATION IF RETURNS NOT RECEIVED FROM COUNTIES.** If the returns from all counties have not been received 3 days before the meeting of the board of state canvassers, the secretary of state shall immediately advise the election administrator of each delinquent county.

**13-15-504. GOVERNOR TO ISSUE COMMISSIONS.** Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

**13-15-505. CANVASS TO BE PUBLIC -- PROCEDURE.** (1) The canvass shall be public. It shall proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county.

**13-15-506. REPORT OF THE CANVASS.** (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

- (a) the total number of electors voting in each county and in each legislative house district and the total in the state;
- (b) the name of each individual receiving votes and the office for which the votes were received;
- (c) the number and title of each ballot issue; and
- (d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as votes of other individuals for the same office but shall be identified as write-in votes.

**13-15-507. DECLARATION, PROCLAMATION, AND CERTIFICATION OF RESULTS.** The board shall declare nominated or elected the individual having the highest number of votes cast for each office, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor.

**RECOUNT AND TIE VOTES****CHAPTER 16****RECOUNTS AND TIE VOTES****Part 1 -- County Recount Board****Section**

13-16-101. County governing body as county recount board.

**Part 2 -- Recounts in Close Elections**

13-16-201. Conditions under which recount to be made.

13-16-202. Determining total vote cast for all candidates for an office.

13-16-203. Recount for tie votes.

13-16-204. Meeting of recount board when recount requested.

13-16-205. Expenses of recount.

Sections 13-16-206 through 13-16-210 reserved.

13-16-211. Recounts allowed if bond posted to cover all costs.

**Part 3 -- Recounts Under Court Order**

13-16-301. Application and court order for recount.

13-16-302. Service of copy of application -- hearing.

13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes.

13-16-304. Ordering in another judge -- jurisdiction.

13-16-305. Limitation of recount to certain counties or precincts.

13-16-306. Procedure when more than one application for recount.

13-16-307. Expenses of court-ordered recount.

**Part 4 -- Recount Procedure**

13-16-401. Renumbered 13-16-411 by Code Commissioner, 1979.

13-16-402. Renumbered 13-16-412 by Code Commissioner, 1979.

13-16-403. Renumbered 13-16-417 by Code Commissioner, 1979.

13-16-404. Renumbered 13-16-418 by Code Commissioner, 1979.

13-16-405. Renumbered 13-16-419 by Code Commissioner, 1979.

Sections 13-16-406 through 13-16-410 reserved.

13-16-411. Individuals entitled to appear at recount -- opening and recount of ballots.

13-16-412. Procedure for recounting paper ballots.

13-16-413. Recount of votes cast by machine.

13-16-414. Recount of votes cast by voting devices.

13-16-415. Recount totals.

13-16-416. Report of recount.

13-16-417. Sealing ballots, machines, or devices.

13-16-418. Procedure after recount.

13-16-419. Recount by board of state canvassers.

#### Part 5 -- Tie Votes

13-16-501. Tie vote after recount.

13-16-502. Tie vote in election for United States congress.

13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator.

13-16-504. Tie vote in election for state executive officers.

13-16-505. Tie vote in election for county commissioner.

13-16-506. Tie vote in election for other county officers.

13-16-507. Tie vote in election for officers of nonspecified political subdivision.

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#### Part 1

##### County Recount Board

**13-16-101. COUNTY GOVERNING BODY AS COUNTY RECOUNT BOARD.** (1) The county recount board shall consist of three members.

(2) Three members of the governing body shall be appointed by the chairman if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant place shall be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

#### Part 2

##### Recounts in Close Elections

**13-16-201. CONDITIONS UNDER WHICH RECOUNT TO BE MADE.** A recount shall be made under any of the following conditions:

(1) If a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may, within 5 days after the official canvass, file with the election administrator a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district

court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each election administrator whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(4) If a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(5) If a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(6) The secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount shall be conducted in all precincts in each county.

(7) If during a canvass of election returns a board of county canvassers finds an error, as provided in 13-15-403, the board immediately may file a petition with the election administrator.

**13-16-202. DETERMINING TOTAL VOTE CAST FOR ALL CANDIDATES FOR AN OFFICE.**

When an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

**13-16-203. RECOUNT FOR TIE VOTES.** When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law.

**13-16-204. MEETING OF RECOUNT BOARD WHEN RECOUNT REQUESTED.** (1) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed with him, as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator.

13-16-205. **EXPENSES OF RECOUNT.** The expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

13-16-206 through 13-16-210 reserved.

13-16-211. **RECOUNTS ALLOWED IF BOND POSTED TO COVER ALL COSTS.** (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file with the officer with whom his declaration or petition for nomination was filed a petition stating that he believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which he resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition.

### Part 3

#### Recounts Under Court Order

13-16-301. **APPLICATION AND COURT ORDER FOR RECOUNT.** (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where he resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, he shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

13-16-302. **SERVICE OF COPY OF APPLICATION -- HEARING.** The candidate found to be elected as a result of the original or first canvass shall be served with

a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

**13-16-303. PRESUMPTION OF INCORRECTNESS FROM FAILURE TO COMPLY WITH PROVISIONS FOR COUNTING VOTES.** If it appears from a verified application that the election judges failed to comply with the provisions of 13-15-202, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue.

**13-16-304. ORDERING IN ANOTHER JUDGE -- JURISDICTION.** (1) If the judge of the district court in which the application is filed is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county recount board.

**13-16-305. LIMITATION OF RECOUNT TO CERTAIN COUNTIES OR PRECINCTS.** (1) If the application asks for a recount in more than one county or precinct but there are not sufficient grounds for a recount in all counties or precincts, the court shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.

(2) The county recount board shall recount votes only in those counties or precincts and for those offices or ballot issues specified in the court order.

**13-16-306. PROCEDURE WHEN MORE THAN ONE APPLICATION FOR RECOUNT.** If more than one candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

**13-16-307. EXPENSES OF COURT-ORDERED RECOUNT.** (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant shall be returned to him.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

## Part 4

## Recount Procedure

13-16-401. Renumbered 13-16-411 by Code Commissioner, 1979.

13-16-402. Renumbered 13-16-412 by Code Commissioner, 1979.

13-16-403. Renumbered 13-16-417 by Code Commissioner, 1979.

13-16-404. Renumbered 13-16-418 by Code Commissioner, 1979.

13-16-405. Renumbered 13-16-419 by Code Commissioner, 1979.

13-16-406 through 13-16-410 reserved.

**13-16-411. INDIVIDUALS ENTITLED TO APPEAR AT RECOUNT -- OPENING AND RECOUNT OF BALLOTS.** (1) Representatives of the news media may be present at the recount. The recount shall be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(3) If the recount is upon a ballot issue, one qualified elector favoring each side of the question may be present and represent his side.

(4) The recount shall proceed as provided in 13-16-412 and as expeditiously as possible until completed.

**13-16-412. PROCEDURE FOR RECOUNTING PAPER BALLOTS.** The county recount board in recounting the ballots shall count, at the same time, the votes cast in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The election administrator shall produce, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all ballots voted in the precinct or precincts.

(2) A member of the county recount board shall open each sealed package or envelope and remove the ballots.

(3) One of the members of the board shall read each ballot aloud. As the ballots are read, two clerks shall write the votes cast for each individual in each precinct, at full length, on previously prepared tally sheets. The tally sheets shall show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

**13-16-413. RECOUNT OF VOTES CAST BY MACHINE.** The recount board shall remove the seals from the voting machines in all precincts where a recount is required and proceed to record the votes cast for all candidates or on all ballot issues for which the recount is ordered in the same manner as the count is made after the closing of the polls. Any paper ballots voted in the precincts shall be recounted as prescribed in 13-16-412.

13-16-414. **RECOUNT OF VOTES CAST BY VOTING DEVICES.** (1) The recount board shall test the automatic tabulating equipment used for votes cast by voting devices. If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered shall be recounted by the tabulating equipment.

(2) If any errors are found in the test or if any questions remain as to the accuracy of the count, the board may have the program and equipment checked by a qualified individual who did not participate in the original preparation of the program and equipment.

(3) The board may also order manual counting of the votes cast if they believe it is necessary to resolve all questions relating to the election.

(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.

(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-412.

(6) Write-in votes shall be recounted in the same manner as the count is made after the closing of the polls.

13-16-415. **RECOUNT TOTALS.** After a recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

13-16-416. **REPORT OF RECOUNT.** (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report which states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

13-16-417. **SEALING BALLOTS, MACHINES, OR DEVICES.** (1) When the recount in a precinct has been finished, each ballot shall again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and shall be delivered to the election administrator for custody.

(2) All voting machines or devices from which seals have been removed shall be resealed in the presence of the election administrator and the recount board and shall be delivered to the election administrator for custody.

(3) All other materials used in the recount that are required to be sealed shall be resealed in the same manner and delivered to the election administrator for custody.

13-16-418. **PROCEDURE AFTER RECOUNT.** (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the election administrator.

(3) The certificate shall set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate shall adequately designate each precinct recounted; the vote of each precinct according to the official canvass previously made; the nomination, position, or

question involved; and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate shall be made in duplicate. One copy shall be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action need be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate shall be elected or nominated to the office.

**13-16-419. RECOUNT BY BOARD OF STATE CANVASSERS.** (1) When the secretary of state receives certificates from all county recount boards, he shall file them, fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question, as corrected by the certificates, and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

## Part 5

### Tie Votes

**13-16-501. TIE VOTE AFTER RECOUNT.** (1) If the recount shows a tie vote for any office and it cannot be determined who has been nominated by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506.

**13-16-502. TIE VOTE IN ELECTION FOR UNITED STATES CONGRESS.** If there is a tie vote for United States representative or senator, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

**13-16-503. TIE VOTE IN ELECTION FOR SUPREME COURT JUSTICE, DISTRICT COURT JUDGE, OR STATE LEGISLATOR.** If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislature, the secretary of state shall send a certified statement to the governor showing the votes cast for each individual and the governor shall appoint one of those candidates to the office.

**13-16-504. TIE VOTE IN ELECTION FOR STATE EXECUTIVE OFFICERS.** If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The legislature, at its next regular session, shall elect one of these candidates to fill the office by joint ballot of the two houses.

**13-16-505. TIE VOTE IN ELECTION FOR COUNTY COMMISSIONER.** If there is a tie vote for commissioner, the senior district judge shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

**13-16-506. TIE VOTE IN ELECTION FOR OTHER COUNTY OFFICERS.** If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

**13-16-507. TIE VOTE IN ELECTION FOR OFFICERS OF NONSPECIFIED POLITICAL SUBDIVISION.** If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

## CHAPTER 17

### VOTING MACHINES

#### Part 1 -- General Provisions

##### Section

- 13-17-101. Secretary of state to approve voting machines and devices.
- 13-17-102. Use of qualified technicians and advisors.
- 13-17-103. Required specifications for equipment.
- 13-17-104. Providing voting machines or devices -- payment.
- 13-17-105. Experimental use of machines or devices.
- 13-17-106. General election laws to apply.
- 13-17-107. Secretary of state to prescribe rules.

#### Part 2 -- Preparation For Use of Machines

- 13-17-201. Election administrator to instruct election judges.
- 13-17-202. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-17-203. Publication of information concerning machines or devices.
- 13-17-204. Voting machines or devices to be exhibited.

13-17-205. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-17-206. Arrangement of machine ballot.  
13-17-207. Repealed. Sec. 407, Ch. 571, L. 1979.

### Part 3 -- Voting Procedure

13-17-301. Placement of equipment -- time for use.  
13-17-302 through 13-17-304. Repealed. Sec. 407, Ch. 571, L. 1979.  
13-17-305. Request to use paper ballots.  
13-17-306. Use of separate paper ballots for voting on certain candidates or issues.  
13-17-307. Repealed. Sec. 407, Ch. 571, L. 1979.

### Part 4 -- Vote Count

13-17-401 through 13-17-404. Repealed. Sec. 407, Ch. 571, L. 1979.

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### Part 1

#### General Provisions

13-17-101. SECRETARY OF STATE TO APPROVE VOTING MACHINES AND DEVICES. (1) Before any voting machine or device can be used for any election in this state, the secretary of state shall:

- (a) examine the machine or device to determine if it complies with the requirements of this chapter;
- (b) within 30 days after examining a machine or device, file a report of the examination in his office;
- (c) include in the report the reasons for approval or disapproval of the use of the machine or device and his opinion of the economic and procedural impact of the use of the machine or device by the various classes of counties of this state; and
- (d) within 5 days after filing the report, transmit to the election administrator of each county a copy of the report.

(2) Voting machines and devices may not be used unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

13-17-102. USE OF QUALIFIED TECHNICIANS AND ADVISORS. (1) The secretary of state may employ and compensate qualified technicians and advisors who are electors of this state to assist him in duties required by 13-17-101. Advisors who are public officers or employees shall serve without additional compensation other than expenses of attending the examination if the examination takes place during their regular working hours.

(2) The person or company submitting a machine or device for examination shall pay the compensation and expenses of technicians and advisors connected with the examination to the secretary of state for deposit in the state general fund. The secretary of state and the person or company shall reach agreement on the number of technicians and advisors to be compensated before the examination is held.

13-17-103. REQUIRED SPECIFICATIONS FOR EQUIPMENT. A voting machine or device may not be approved unless:

- (1) an elector can vote in secrecy;
- (2) an elector is prevented from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote;
- (3) an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election;
- (4) an elector can vote a split ticket in a general election if he desires;
- (5) every valid vote cast is registered and recorded;
- (6) the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue;
- (7) it allows write-in voting; and
- (8) a guarantee to provide training and assistance to election officials is included in each contract for purchase of the machine or device.

13-17-104. PROVIDING VOTING MACHINES OR DEVICES -- PAYMENT. (1) The county governing body may provide approved voting machines or devices as practicable.

(2) Funds for voting machines or devices may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting machines or devices or the question of which type of voting machine or device to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

13-17-105. EXPERIMENTAL USE OF MACHINES OR DEVICES. The governing body of a county may provide for the experimental use at an election of a voting machine or device that has been approved by the secretary of state in one or more precincts without a formal adoption or purchase of the machine or device. Its use at the election is valid for all purposes as if the equipment had been formally adopted or purchased.

13-17-106. GENERAL ELECTION LAWS TO APPLY. All laws applicable to elections where voting is not done by machine or device and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines or devices are used if they are not in conflict with the provisions of this chapter.

13-17-107. SECRETARY OF STATE TO PRESCRIBE RULES. (1) The secretary of state may prescribe rules for the submission of voting machines and devices for examination and additional requirements for approval of machines and devices.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting machine or device now approved for use in this state and for each type of machine or device approved for use under the provisions of this chapter.

## Part 2

## Preparation For Use of Machines

13-17-201. ELECTION ADMINISTRATOR TO INSTRUCT ELECTION JUDGES. (1) Before each election, the election administrator shall instruct all election judges in the use of the machines or devices. He shall give to each election judge who has received instruction and is fully qualified to conduct an election with the machine a certificate to that effect.

(2) A chief election judge may not serve in a precinct where voting machines or devices are used unless he has received instruction, is fully qualified to perform duties in connection with the machine or device, and has received a certificate to that effect from the election administrator.

13-17-202. REPEALED. Sec. 407, Ch. 571, L. 1979.

13-17-203. PUBLICATION OF INFORMATION CONCERNING MACHINES OR DEVICES. Not more than 10 or less than 3 days before an election at which voting machines or devices will be used, the election administrator shall publish on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county:

- (1) a diagram showing the voting machine or device and ballot arrangement (in newspaper only);
- (2) a statement of the locations where voting machines or devices are on public exhibition;
- (3) illustrated instructions on how to vote.

13-17-204. VOTING MACHINES OR DEVICES TO BE EXHIBITED. A voting machine or device shall be on exhibition in the office of the election administrator of counties where such equipment is used and may be exhibited at other locations. The election administrator shall demonstrate the voting machine or device to any inquiring elector.

13-17-205. REPEALED. Sec. 407, Ch. 571, L. 1979.

13-17-206. ARRANGEMENT OF MACHINE BALLOT. The order and arrangement of ballots to be used with voting machines or devices shall be the same as paper ballots insofar as possible and shall be prescribed by the secretary of state before each election.

13-17-207. REPEALED. Sec. 407, Ch. 571, L. 1979.

## Part 3

## Voting Procedure

13-17-301. PLACEMENT OF EQUIPMENT -- TIME FOR USE. (1) The exterior of the voting machines or devices or the booths in which they are placed and every part of the polling place shall be in plain view of the election judges.

(2) An elector may not remain within the voting machine or device booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

13-17-302. REPEALED. Sec. 407, Ch. 571, L. 1979.

13-17-303. REPEALED. Sec. 407, Ch. 571, L. 1979.

13-17-304. REPEALED. Sec. 407, Ch. 571, L. 1979.

13-17-305. REQUEST TO USE PAPER BALLOTS. (1)(a) Where voting machines are used, an elector may request to vote by paper ballot instead of using the machine. The election judges shall provide the elector with a paper ballot when requested.

(b) Where voting devices are used, the election administrator, with approval of the governing body of the county if the election administrator is an appointed official, may provide paper ballots if the election administrator believes such ballots are necessary. However, if more than 5% of the electors voting in the last preceding general election voted using paper ballots, the election administrator shall provide paper ballots. The printing of paper ballots provided pursuant to this subsection is an allowable election cost under the provisions of 13-1-302.

(2) Paper ballots shall be cast and counted by the election judges in the manner provided by law.

(3) For the purposes of this section, "voting machine" means a mechanical apparatus which is used for voting by using levers which provide a tabulating system within the machine.

13-17-306. USE OF SEPARATE PAPER BALLOTS FOR VOTING ON CERTAIN CANDIDATES OR ISSUES. Whenever a voting machine or device does not allow proper lockout or does not allow adequate space for the candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.

13-17-307. REPEALED. Sec. 407, Ch. 571, L. 1979.

#### Part 4

##### Vote Count

13-17-401 through 13-17-404. REPEALED. Sec. 407, Ch. 571, L. 1979.

**ELECTIONS****CHAPTER 18****ELECTRONIC VOTING SYSTEMS****Part 1****General Provisions**

(Sections 13-18-101 through 13-18-106 repealed. Sec. 407, Ch. 571, L. 1979)

**Part 2****Procedure**

(Sections 13-18-201 through 13-18-210 repealed. Sec. 407, Ch. 571, L. 1979)

**CHAPTER 19****MAIL BALLOT ELECTIONS****Part 1 -- General Provisions****Section**

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- 13-19-102. Definitions.
- 13-19-103. General election laws to apply.
- 13-19-104. Mail ballot elections not mandatory -- when authorized--when prohibited.
- 13-19-105. Role of secretary of state.
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### Part 1

#### General Provisions

**13-19-101. STATEMENT OF PURPOSE.** The purpose of this chapter is to provide the option of conducting certain specified elections using a procedure called a "mail ballot election" and to provide the procedures therefor. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances.

**13-19-102. DEFINITIONS.** As used in this chapter, the following definitions apply:

(1) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(2) "Mail ballot election" means any election that involves either candidates or ballot issues and is conducted in compliance with the procedure specified in 13-19-106.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and which is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote and to prevent that elector's ballot from being distinguished from the ballots of other electors.

**13-19-103. GENERAL ELECTION LAWS TO APPLY.** All laws applicable to elections when voting is not done by mail ballot and all penalties prescribed for

violation of those laws apply to elections conducted by mail ballot to the extent they do not specifically conflict with the provisions of this chapter or are not otherwise provided for by this chapter.

**13-19-104. MAIL BALLOT ELECTIONS NOT MANDATORY -- WHEN AUTHORIZED - WHEN PROHIBITED.** (1) Conducting elections by mail ballot is only one option available to local officials and nothing in this chapter mandates that the procedure be used.

(2) The following elections may be conducted by mail ballot:

- (a) an election in a political subdivision required to hold annual elections under 13-1-104(3);
- (b) an election in a city of the third class, as defined in 7-1-4111(3), if all of the candidates whose names will appear on the ballot are candidates for offices to be elected without party designation;
- (c) an election in a town as defined in 7-1-4111(4);
- (d) an election conducted under 7-13-2236 in an unincorporated area; and
- (e) a special election called by a local government unit for the sole purpose of submitting one or more ballot issues to its qualified electors if such special election is not held in conjunction with a statutorily scheduled election.

(3) The following elections may not be conducted by mail ballot:

- (a) an election held for one of the purposes or at the time provided in 13-1-104(1) and 13-1-107(1);
- (b) an election held for one of the purposes or at the time provided in 13-1-104(2) and 13-1-107(2), except as specifically allowed by subsections (2)(b) and (2)(c) of this section;
- (c) an election being held under the provisions of the Montana Recall Act, in Title 2, chapter 16, part 6;
- (d) an election involving candidates for public office, except as specifically allowed by subsection (2)(a) through (2)(c) of this section; and
- (e) a special election being held in conjunction with a statutorily scheduled election.

**13-19-105. ROLE OF SECRETARY OF STATE.** In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

- (1) prescribe the form of materials to be used in the conduct of mail ballot elections;
- (2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and
- (3) adopt rules consistent with this chapter to:
  - (a) establish and maintain uniformity in the conduct of mail ballot elections; and
  - (b) establish procedures for the conduct of mail ballot elections that:
    - (i) prevent fraud;
    - (ii) ensure the accurate handling and canvassing of mail ballots; and
    - (iii) ensure that the secrecy of voted ballots is maintained.

**13-19-106. GENERAL REQUIREMENTS FOR MAIL BALLOT ELECTION.** A mail ballot election must be conducted substantially as follows:

- (1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) The elector shall mark the ballot at home and place it in a secrecy envelope.

(4) The elector shall then place the secrecy envelope containing his ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received prior to a specified time on election day.

(5) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(6) If the ballot so qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(7) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law.

## Part 2

### Preelection Procedure

**13-19-201. HOW ELECTION INITIATED.** A proposal to conduct an election under this chapter may be initiated by either the election administrator or the appropriate governing body as provided in 13-19-202 through 13-19-204.

**13-19-202. INITIATION BY GOVERNING BODY.** (1) A political subdivision may, by resolution of the governing body addressed to the election administrator, request that a particular election be conducted under the provisions of this chapter.

(2) No later than 70 days before election day, the governing body shall transmit its request to the election administrator, who shall determine whether it is economically and administratively feasible to conduct the requested election by mail ballot.

(3) Except as provided in 13-19-204, the decision to conduct an election under the provisions of this chapter is within the sole discretion of the election administrator.

(4) Within 5 days after receiving a request, the election administrator shall respond in writing, stating that the request is either granted or denied for reasons specified. If granted, the election administrator shall prepare a plan as provided in 13-19-205.

**13-19-203. INITIATION BY ELECTION ADMINISTRATOR.** (1) Even if no request has been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if, in his discretion, that would be the most economically and administratively feasible way of conducting the election in question.

(2) If he decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing it of his decision to conduct the election by mail ballot and the reasons therefor and the right of the governing body to object under 13-19-204.

**13-19-204. OBJECTION OF POLITICAL SUBDIVISION.** (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.

(2) If such a resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted under this chapter.

**13-19-205. WRITTEN PLAN FOR CONDUCT OF ELECTION -- AMENDMENTS - APPROVAL PROCEDURES.** (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state at least 60 days prior to the date set for the election.

(2) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(3) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(4) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan.

**13-19-206. DISTRIBUTING MATERIALS TO ELECTORS -- PROCEDURE.** For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions for voting and returning ballots; and

(3) ensure that each packet is:

(a) clearly marked on its face with the words "DO NOT FORWARD. RETURN TO SENDER. RETURN POSTAGE GUARANTEED.";

(b) addressed to a single individual elector at the most current address available from the official registration records; and

(c) deposited in the United States mail with sufficient prepaid postage for it to be delivered to the elector's address.

**13-19-207. WHEN MATERIALS TO BE MAILED.** For any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day. All ballots must be mailed the same day.

### Part 3

#### Election procedure

**13-19-301. VOTING MAIL BALLOTS.** (1) Upon receipt of his ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing a single ballot in the return/-verification envelope;

(d) executing the affidavit printed on the return/verification envelope; and

(e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box.

**13-19-302. PROPORTIONAL VOTING.** The election administrator shall provide a method for proportional voting in his written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person.

**13-19-303. VOTING BY ELECTOR WHEN ABSENT FROM PLACE OF RESIDENCE DURING CONDUCT OF ELECTION.** (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than that which appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) Ballots mailed to electors pursuant to this section must be mailed the same day that all other ballots are mailed.

**13-19-304. VOTING BY NONREGISTERED ELECTORS.** (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, such an individual may vote by appearing in person at the election administrator's office and demonstrating that he possesses the qualifications which entitle him to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing his signature and the address to which his ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time.

**13-19-305. REPLACEMENT BALLOTS -- PROCEDURES.** (1) An elector may obtain a replacement ballot as provided in this section if his ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking a replacement ballot shall sign a sworn statement stating that the ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall

issue a replacement ballot to the elector. Each spoiled ballot must be returned before a new one may be issued.

(4) The election administrator shall designate his office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If he later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, he shall immediately notify the county attorney and the secretary of state of each instance.

**13-19-306. RETURNING MARKED BALLOTS -- WHEN -- WHERE.** (1) After complying with 13-19-301, an elector may return his ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it in person to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have his ballot counted, each elector must return it in such a manner that it is received prior to 8 p.m. on election day.

**13-19-307. PLACES OF DEPOSIT.** (1) The election administrator shall designate his office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector.

(2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any location so designated shall function as a place of deposit only on election day.

(5) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.

**13-19-308. DISPOSITION OF BALLOTS RETURNED IN PERSON.** Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot; and

(c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall;

(a) keep a log of the names of all electors from whom he receives ballots;

(b) have the elector sign the log where his name has been entered;

(c) while the elector is present, compare the signature on the return/verification envelope with that entered in the log and resolve any discrepancies with the elector;

(d) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(e) securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail.

**13-19-309. DISPOSITION OF BALLOTS RETURNED BY MAIL.** (1) Upon receipt of each return/verification envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelop containing the ballot in the official ballot box.

(2) If at any point there is a question concerning a particular ballot, the election administrator may not deposit the ballot in question. The election administrator shall retain all materials relating to the questioned ballot until the question is resolved satisfactorily or the question is determined as provided in 13-19-314.

**13-19-310. SIGNATURE VERIFICATION -- PROCEDURES.** (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, he shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, he may not validate the ballot but instead shall:

(a) give notice to the elector as provided in 13-19-313; and

(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination.

**13-19-311. VALID BALLOTS -- REQUIREMENTS.** (1) Only valid ballots may be counted in an election conducted under the chapter.

(2) For the purpose of this chapter, a ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day.

(3) A ballot is invalid if:

- (a) more than one ballot is enclosed in a single return/verification or secrecy envelope; or
- (b) any identifying marks are placed on the ballot by the elector.

**13-19-312. PROCEDURE AT CLOSE OF VOTING.** After the close of voting on election day, election officials shall:

- (1) open the official ballot boxes;
- (2) open each secrecy envelope, removing the ballot; and
- (3) proceed to count the votes as otherwise provided by law.

**13-19-313. NOTICE TO ELECTOR -- OPPORTUNITY TO RESOLVE QUESTIONS.** (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election administrator:

- (a) is unable to verify the elector's signature under 13-19-310; or
- (b) has discovered a procedural mistake made by the elector that would invalidate his ballot under 13-19-311.
- (2) The election administrator shall inform the elector that he may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.
- (3) Any elector so appearing must be permitted to:
  - (a) verify his signature, after proof of identification, by affirming that the signature is in fact his or completing a new registration card containing his current signature;
  - (b) correct any minor mistake if the correction would render the ballot valid; or
  - (c) if necessary, request and receive a replacement ballot and vote it at that time.

**13-19-314. RESOLVING ISSUES IN QUESTION.** Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

- (1) If the election administrator is unable to resolve the issue to his satisfaction, he shall give notice to the elector as provided in 13-19-313.
- (2) If the elector fails to appear or, if even after such an appearance, the issue is still not resolved to the election administrator's satisfaction, the election administrator shall present the issue for a determination to the board of judges appointed to count the ballots.
- (3) If the counting board is unable to resolve the issue to its satisfaction, it may not count the ballot in question. Instead, the election administrator shall present the issue to the board of canvassers for a determination of the issue.
- (4) If the board of canvassers is unable to resolve the issue, the ballot must not be counted.

#### CHAPTERS 20 THROUGH 24

#### RESERVED

## CHAPTER 25

## ELECTIONS FOR FEDERAL OFFICE

## Part 1 -- Presidential Elections

## Section

- 13-25-101. Nomination of electors -- ballot.
- 13-25-102. Election of electors.
- 13-25-103. Returns -- lists of electors elected.
- 13-25-104. Meeting and voting of electors.
- 13-25-105. Lists of persons voted for.
- 13-25-106. Compensation of electors.
- 13-25-107. Vacancy in office of elector.

## Part 2 -- Congressional Elections

- 13-25-201. Election of United States senators and representatives.
- 13-25-202. Vacancy in office of United States senator.
- 13-25-203. Vacancy in office of United States representative.
- 13-25-204. Certificates issued by governor.
- 13-25-205. Nominations for special election.

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## Part 1

## Presidential Elections

**13-25-101. NOMINATION OF ELECTORS -- BALLOT.** (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state no later than 75 days before the general election, in the manner and number provided by law.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot.

**13-25-102. ELECTION OF ELECTORS.** (1) On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors for president and vice president of the United States as are allocated to this state.

(2) The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

**13-25-103. RETURNS -- LISTS OF ELECTORS ELECTED.** (1) The votes for candidates for president and vice president shall be given, received, returned, and canvassed as the votes are given, returned, and canvassed for candidates for congress.

(2) The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and delivered by the latter to the college of electors at the hour of their meeting.

**13-25-104. MEETING AND VOTING OF ELECTORS.** (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one person for president and one for vice president of the United States.

(3) The electors shall cast their ballots for the persons who received the highest number of votes for president and vice president of the United States, respectively, in the most recently conducted general election in the state of Montana.

**13-25-105. LISTS OF PERSONS VOTED FOR.** The electors shall make lists of the persons voted for as president and vice president; indicate the number of votes for each; and certify, seal, and transmit the lists as prescribed by laws of the United States.

**13-25-106. COMPENSATION OF ELECTORS.** Electors shall receive the same pay and mileage allowed members of the legislature. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

**13-25-107. VACANCY IN OFFICE OF ELECTOR.** If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

## Part 2

### Congressional Elections

**13-25-201. ELECTION OF UNITED STATES SENATORS AND REPRESENTATIVES.** (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) Nominations and elections shall be as provided by law for governor.

**13-25-202. VACANCY IN OFFICE OF UNITED STATES SENATOR.** (1) If a vacancy occurs in the office of United States senator, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election.

(2) The governor may make a temporary appointment to fill the vacancy until the election.

**13-25-203. VACANCY IN OFFICE OF UNITED STATES REPRESENTATIVE.** (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term shall be held no less than 75 or more than 90 days from the time the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the

primary and general elections in odd-numbered years, the election shall be held with the primary or general election.

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.

13-25-204. CERTIFICATES ISSUED BY GOVERNOR. Upon receipt of the report of the canvass required by 13-15-507, the governor shall send a certificate of election to each person elected.

**13-25-205. NOMINATIONS FOR SPECIAL ELECTION.** (1) When a special election is ordered to fill a vacancy in the office of United States senator or United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties shall be made no later than 75 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the 75th day before the election.

## CHAPTER 26

# CONVENTION TO RATIFY AMENDMENTS TO UNITED STATES CONSTITUTION

## Part 1 -- Ratification of Amendments

## Section

- 13-26-101. Convention to be held.
- 13-26-102. Delegates to constitutional convention.
- 13-26-103. Nomination of delegates.
- 13-26-104. Determination of election results.
- 13-26-105. Ballot form.
- 13-26-106. Time for convention of delegates.
- 13-26-107. Operation of the convention.
- 13-26-108. Compensation of delegates and officers.
- 13-26-109. Certificate of result -- transmission to secretary of state of United States.
- 13-26-110. Qualifications of petitioners and electors.
- 13-26-111. Federal acts to supersede state provisions concerning amendments.

## Part 1

## Ratification of Amendments

**13-26-101. CONVENTION TO BE HELD.** If congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

13-26-102. DELEGATES TO CONSTITUTIONAL CONVENTION. (1) The number of convention delegates shall be equal to the number of members in the legisla-

ture. Each district shall have delegates equal to the number of members it is entitled to in the legislature.

(2) Delegates shall be elected at the next primary or general election after congress has proposed the amendment or at a special election called by the governor.

(3) Except as otherwise provided in this chapter, the election shall be in accordance with the laws for the election of members of the legislature.

**13-26-103. NOMINATION OF DELEGATES.** (1) Nominations for the office of delegate shall be by petition signed by not less than 100 voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than 75 days prior to the election.

**13-26-104. DETERMINATION OF ELECTION RESULTS.** The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, the total votes cast for all candidates "in favor of" ratification, the votes cast for each candidate "opposed to" ratification, and the total votes cast for all candidates "opposed to" ratification shall be ascertained.

(2) From the side receiving the greater number of votes, those candidates (equal in number to the number of delegates to be elected) receiving the highest number of votes are elected.

**13-26-105. BALLOT FORM.** The official ballot form shall be prescribed by the secretary of state.

**13-26-106. TIME FOR CONVENTION OF DELEGATES.** Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a.m. and constitute a convention to act upon the proposed amendment.

**13-26-107. OPERATION OF THE CONVENTION.** A majority of the total number of delegates constitutes a quorum. The convention:

- (1) may choose a president, secretary, and other necessary officers;
- (2) may make rules governing the procedure of the convention; and
- (3) shall judge the qualifications and election of its members.

**13-26-108. COMPENSATION OF DELEGATES AND OFFICERS.** Each delegate shall receive mileage and per diem as provided by law for members of the legislature. The secretary and other officers shall receive compensation fixed by the convention.

**13-26-109. CERTIFICATE OF RESULT -- TRANSMISSION TO SECRETARY OF STATE OF UNITED STATES.** When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States. A duplicate of the certificate shall be filed with the secretary of state of Montana.

13-26-110. **QUALIFICATIONS OF PETITIONERS AND ELECTORS.** Persons entitled to petition for nomination and vote at the election are determined by the laws on registration.

13-26-111. **FEDERAL ACTS TO SUPERSEDE STATE PROVISIONS CONCERNING AMENDMENTS.** If congress, by resolution or statute, prescribes how the convention shall be constituted and held, this chapter is inoperative, and the convention shall be constituted and held as congress directs. All state officers are directed to take action to constitute the convention as authorized by congress and act as if acting under state statute.

## CHAPTER 27

### BALLOT ISSUES

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- 13-27-311. Publication of proposed constitutional amendments.
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#### Part 1

##### General Provisions

13-27-101. **ESTABLISHMENT OF INITIATIVE AND REFERENDUM PROCEDURES.** The right of the people to petition to enact laws by initiative, to petition to approve or reject by referendum any act of the legislature except an appropriation of money, to call for a vote on whether there shall be a constitutional convention, and to propose constitutional amendments by initiative as guaranteed by The Constitution of the State of Montana may be exercised through adherence to the procedures established in this chapter.

13-27-102. **WHO MAY PETITION.** A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana.

13-27-103. **SUFFICIENCY OF SIGNATURE.** A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

**13-27-104. TIME FOR FILING.** Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the second Friday of the fourth month prior to the election at which they are to be voted upon by the people.

**13-27-105. EFFECTIVE DATE OF INITIATIVE AND REFERENDUM ISSUES.** (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue, other than a constitutional amendment, approved by the people is effective on October 1 following approval. If the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.

(2) A constitutional amendment proposed by initiative or by the legislature and approved by the people is effective on July 1 following approval unless the amendment provides otherwise.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election.

**13-27-106. VIOLATIONS -- PENALTIES.** A person who knowingly makes a false entry upon a petition or affidavit required by this chapter or who knowingly signs a petition to place the same issue on the ballot at the same election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

## Part 2

### Form of Petitions

**13-27-201. FORM OF PETITION GENERALLY.** (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and

back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative council. If sheets are circulated in sections, the complete text of the measure must be attached to each section.

**13-27-202. RECOMMENDATIONS -- APPROVAL OF FORM REQUIRED.** (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative council for review.

(b) The council staff shall review the text for clarity, consistency, and any other factors the council staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the council staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider any such recommendations and respond in writing to the council, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative council shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy thereof available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to the attorney general for his approval. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval within 28 days after submission of the petition sheet. The secretary of state shall send written notice if the petition has been rejected together with reasons for rejection within 14 days after submission of the petition sheet.

**13-27-203. NUMBERING OF PETITIONS.** The secretary of state shall serially number all submitted petitions that are approved as to form continuously from year to year. The numbering system shall distinguish the different types of petitions received and include provisions for numbering measures referred to the people by the legislature.

13-27-204. PETITION FOR THE INITIATIVE. (1) The following is substantially the form for a petition calling for a vote to enact a law by the initiative:

PETITION TO PLACE  
INITIATIVE NO.        ON  
THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is ...., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., 19..., general election ballot:

(Title of measure written pursuant to 13-27-312)  
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

13-27-205. PETITION FOR THE REFERENDUM. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.         
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ...., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ...., passed by the legislature on ..... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

**WARNING**

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

**13-27-206. PETITION FOR INITIATIVE FOR CONSTITUTIONAL CONVENTION.** (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there shall be a constitutional convention:

**PETITION TO PLACE  
INITIATIVE NO.\_\_\_\_, CALLING FOR  
A CONSTITUTIONAL CONVENTION, ON  
THE ELECTION BALLOT**

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ...., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention the legislature will call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., 19..., general election ballot:

(Title of the initiative written pursuant to 13-27-312)  
(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

**WARNING**

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or

signs when not a legally registered Montana voter is subject to a \$500 fine or 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

**13-27-207. PETITION FOR INITIATIVE FOR CONSTITUTIONAL AMENDMENT.** (1) The following is substantially the form for a petition for the initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL  
AMENDMENT NO. \_\_\_\_ ON  
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing the petition is ...., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ..... ..., 19..., general election ballot:

(Title of the proposed constitutional amendment  
written pursuant to 13-27-312)  
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

## Part 3

## Submission and Processing of Petitions

**13-27-301. SUBMISSION OF PETITION SHEETS -- WITHDRAWAL OF SIGNATURES.** (1) Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 2 weeks before the final date for filing the petition with the secretary of state.

(2) Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in 13-27-301. The secretary of state shall prescribe the form to be used by an elector desiring to have his signature withdrawn from a petition.

**13-27-302. CERTIFICATION OF SIGNATURES.** An affidavit, in substantially the following form, shall be attached to each sheet or section submitted to the county official:

I, (Name of person who circulated this petition), affirm, or being first sworn, depose and say: that I circulated or assisted in circulating the petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, are the signatures of Montana electors who are registered at the address following their signature, and that the signers knew the contents of the petition before signing the same.

.....  
(Signature of petition circulator)

.....  
(Address of petition circulator)

Subscribed and sworn to before me this .... day of ...., 19....

.....  
(Person authorized to take oaths)

Seal

.....  
(Title or notarial information)

**13-27-303. VERIFICATION OF SIGNATURES BY COUNTY OFFICIAL -- ALLOCATING VOTERS FOLLOWING REAPPORTIONMENT -- DUPLICATE SIGNATURES.** (1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all

signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition for a ballot issue under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before members of the house of representatives have been elected and qualified under the plan, the legislative representative districts among which the signatures must be allocated must be those in existence when the plan was filed.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207.

**13-27-304. COUNTY OFFICIAL TO FORWARD VERIFIED SHEETS.** The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ...., Secretary of State of the state of Montana:

I, ...., .... (title) of the County of ...., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in Legislative Representative District No. .... (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address and legislative representative district number is completed for each valid signature.

Signed: .... (Date) .....(Signature)

Seal .....(Title)

**13-27-305. RETENTION OF COPIES BY COUNTY OFFICIAL.** The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of his office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition.

**13-27-306. CHALLENGE TO SIGNATURES BY ELECTOR OF COUNTY.** A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of his belief and request for comparison of those signatures he believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official must compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state.

**13-27-307. CONSIDERATION AND TABULATION OF SIGNATURES BY SECRETARY OF STATE.** (1) The secretary of state shall consider and tabulate only such signatures on petitions as are certified by the proper county official, and each such certificate is *prima facie* evidence of the facts stated therein. However, the secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official shall be in substantially the following form:

State of Montana )  
                    )  
                    ss.  
County of .....

I, ....., (name), a duly qualified and acting notary public in and for the above-named county and state, do hereby certify that I am personally acquainted with each of the following-named electors whose signatures are affixed to the annexed (petition) (copy of a petition) and I know of my own knowledge that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office addresses are correctly stated therein.

..... (Names of such electors)  
In testimony whereof, I have hereunto set my hand and official seal this  
.... day of ....., 19...

Seal ..... (Signature)  
..... (Notarial information)

**13-27-308. CERTIFICATION OF PETITION TO GOVERNOR.** When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, he shall immediately certify to the governor that the completed petition has been officially filed.

**13-27-309. REPEALED.** Sec. 195, Ch. 575, L. 1981.

**13-27-310. TRANSMITTAL OF ISSUES REFERRED BY THE LEGISLATURE AND BALLOT FORMS TO THE ATTORNEY GENERAL.** (1) The secretary of state shall transmit a copy of the form in which a ballot issue proposed by petition will appear on the ballot to the attorney general on the same day the completed petition is certified to the governor.

(2) The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

(3) If the ballot form is not approved by the attorney general pursuant to 13-27-313, the secretary of state shall immediately submit a new ballot form to the attorney general.

**13-27-311. PUBLICATION OF PROPOSED CONSTITUTIONAL AMENDMENTS.** (1) If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall have the proposed amendment or amendments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people, in not less than one newspaper of general circulation in each county.

(2) The secretary of state may arrange for newspaper, radio, or television publication of proposed constitutional amendments in each county. A summary of the amendment as provided by the attorney general, as described in 13-27-312 or 13-27-315, would suffice for the publication required by this section and should be made at least twice each month for 2 months previous to the election.

**13-27-312. REVIEW OF PETITION BY ATTORNEY GENERAL -- PREPARATION OF STATEMENTS -- FISCAL NOTE.** (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note. If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing the petition, two persons known to oppose the measure, and one representative of the attorney general's office who is the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and  
(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose prepared pursuant to subsection (1) or (2), unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

FOR extending the right to vote to persons 18 years of age

AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement if applicable to the secretary of state within 21 days after receipt of the petition by the attorney general.

**13-27-313. REVIEW OF BALLOT FORMS BY ATTORNEY GENERAL.** The attorney general shall examine each ballot form submitted to his office pursuant to 13-27-310 and within 20 days of receipt of the ballot form shall notify the secretary of state of his approval or rejection of the ballot form. If the ballot form is rejected, the attorney general shall approve or reject a new ballot form submitted by the secretary of state pursuant to 13-27-310(3) within 5 days of receiving the new form.

**13-27-314. REPEALED.** Sec. 19, Ch. 400, L. 1979.

**13-27-315. STATEMENTS BY ATTORNEY GENERAL ON ISSUES REFERRED BY LEGISLATURE.** (1) Upon receipt of a copy of a ballot form under 13-27-310(2) for an issue proposed by the legislature, the attorney general shall order a fiscal note as provided in 13-27-312(1) if the issue has an effect on the revenues, expenditures, or the fiscal liability of the state. At the same time the explanatory statement is prepared under subsection (2), the attorney general shall prepare a fiscal statement of no more than 50 words to be forwarded to the secretary of state at the same time as the explanatory statement.

(2) At the same time the attorney general, pursuant to 13-27-313, informs the secretary of state of the approval or rejection of a ballot form for an issue proposed by the legislature, the attorney general shall forward to the secretary of state a statement, not exceeding 100 words, expressing a true and impartial explanation of the purpose of the measure in plain, easily understood language. The statement may not be an argument and may not be written to create a prejudice for or against the issue. The statement prepared under this section is known as the attorney general's explanatory statement.

(3) If statements of the implication of a vote for or against a ballot issue have not been provided by the legislature, the attorney general shall prepare the statements. Requirements for statements of implication for ballot issues referred by the legislature are the same as those provided in 13-27-312 for other ballot issues. Statements of implication prepared by the attorney general must be returned to the secretary of state no later than the time specified for approval of the ballot form.

**13-27-316. COURT REVIEW OF ATTORNEY GENERAL STATEMENTS.** (1) If the proponents of a ballot measure believe that the statement of purpose, the state-

ments of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of receipt of the notice from the secretary of state provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(2) If the opponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(3) (a) Notice shall be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312.

(b) A statement certified by the court shall be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court.

#### Part 4

##### Voter Information Pamphlets

**13-27-401. VOTER INFORMATION PAMPHLET.** (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;  
(c) arguments advocating approval and rejection of the issue; and  
(d) rebuttal arguments.

(2) The pamphlet shall also contain a notice advising the recipient where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet shall be presented in the same order.

##### **13-27-402. COMMITTEES TO PREPARE ARGUMENTS FOR AND AGAINST BALLOT ISSUES.**

(1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this section.

(2) The following committees shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members:

(a) the committee advocating approval of an act referred to the people or of a constitutional amendment proposed by the legislature; or

(b) the committee advocating approval of an act referred to the people by referendum petition.

(3) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(4) The following shall be three-member committees and shall be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202:

(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

(6) No person may be required to serve on any committee under this section, and the person making an appointment must have written acceptance of appointment from the appointee.

**13-27-403. APPOINTMENT TO COMMITTEE.** (1) Appointments to committees advocating approval or rejection of an act referred to the people or a constitutional amendment proposed by the legislature shall be made no later than 6 months before the election at which the ballot issue will be voted on by the people.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be made no later than 30 days after the measure is approved for circulation by the secretary of state. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection. Such submission must include the written acceptance of appointment from each appointee required by section 13-27-402(6).

(3) All appointees to a committee pursuant to subsection (1) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 5 days after the deadline set for appointment of committee members, of the deadlines for submission of the committee's arguments.

(4) All appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt

requested, no later than 35 days after the petition has been approved for circulation, of the deadlines for submission of the committee's arguments.

(5) Committees appointed under subsections (2)(b), (4), and (5) of 13-27-402 must be vacated and have no further obligation if the ballot measure for which they were appointed fails to receive sufficient signatures to place it on the ballot. The secretary of state shall notify the committee members of the failure of a ballot measure to receive sufficient signatures no later than 3 days after the filing deadline set in 13-27-104.

**13-27-404. COMMITTEE CHAIRMAN.** The appointee of the president of the senate is the chairman of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a chairman at the time the appointments are made.

**13-27-405. COMMITTEE EXPENSES.** Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed \$100 for a three-member committee and \$200 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, shall be submitted to the secretary of state for payment from funds appropriated for that purpose.

**13-27-406. LIMITATION ON LENGTH OF ARGUMENT -- TIME OF FILING.** An argument advocating approval or rejection of a ballot issue is limited to 500 words and shall be filed, in typewritten form, with the secretary of state no later than 85 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation must approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

**13-27-407. REBUTTAL ARGUMENTS.** The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue in his office. The committees may prepare rebuttal arguments no longer than 250 words that shall be filed, in typewritten form, with the secretary of state no later than 10 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument shall be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

**13-27-408. REJECTION OF IMPROPER ARGUMENTS.** The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet.

13-27-409. **LIABILITY FOR CONTENTS OF ARGUMENT.** Nothing in this chapter relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

13-27-410. **PRINTING AND DISTRIBUTION OF VOTER INFORMATION PAMPHLET.** (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 90 days before the election at which they will be submitted. The requisition shall include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract shall require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 30 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing shall take place no later than 2 weeks after the pamphlets are received from the printer.

(5) Ten copies of the voter information pamphlet shall be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.

## Part 5

### Election Procedure

13-27-501. **SECRETARY OF STATE TO CERTIFY BALLOT FORM -- ABBREVIATED BALLOT.** (1) The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) Except as provided in (4), the secretary of state shall list for each issue:

- (a) the number;
- (b) the method of placement on the ballot;
- (c) the title;
- (d) the attorney general's explanatory statement if applicable;
- (e) the fiscal statement if applicable; and
- (f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

- (a) an act referred by the legislature;
- (b) an amendment to the constitution proposed by the legislature;
- (c) an act of the legislature referred by referendum petition; or
- (d) a law or constitutional amendment proposed by initiative petition.

(4) The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that he be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which he has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f). If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place.

**13-27-502. PREPARATION OF BALLOTS BY COUNTY OFFICIALS.** Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by 13-12-207, 13-12-212, and 13-17-206 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the official ballot as prescribed by 13-12-207, 13-12-212, and 13-17-206.

**13-27-503. DETERMINATION OF RESULT OF ELECTION.** The votes on ballot issues shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues shall be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of state canvassers shall proceed within 20 days after the election at which such ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in his office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor.

**13-27-504. COPY OF APPROVED ISSUES TO BE SENT TO LEGISLATIVE COUNCIL.** The secretary of state shall send a certified copy of all ballot issues which have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the executive director of the legislative council

at the same time he transmits a certified copy of the statement of the canvass to the governor.

**CHAPTERS 28 THROUGH 34  
RESERVED**

**CHAPTER 35**

**ELECTION AND CAMPAIGN PRACTICES  
AND CRIMINAL PROVISIONS**

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**Section**

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- 13-35-221. Improper nominations.
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- 13-35-225. Election materials not to be anonymous.
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- 13-35-228. Prohibition of salary increase contribution.
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- 13-35-230. Repealed. Sec. 407, Ch. 571, L. 1979.
- 13-35-231. Unlawful for political party to endorse judicial candidate.
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- 13-35-233. Solicitation of votes on election day.
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### Part 3 -- Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices.  
13-35-302. Candidates to be given opportunity to subscribe to campaign practices  
code -- publicity.

## Part 1

## General Provisions

13-35-101. **ELECTION CODE NOT TO SUPERSEDE CRIMINAL CODE -- STATUTE OF LIMITATIONS.** (1) The penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of the election laws are those specified in 45-1-205.

**13-35-102. TRIVIAL BENEFITS NOT COVERED BY CRIMINAL PROVISIONS.** It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.

**13-35-103. VIOLATIONS AS MISDEMEANOR.** A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

13-35-104. **ATTEMPT AS A VIOLATION.** An attempt, as defined in 45-4-103, to violate a provision of the election laws of this state is itself a violation of the election laws and is punishable as provided in 45-4-103.

13-35-105. **AIDING AND ABETTING.** A person who is legally accountable, as provided in 45-2-302, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

13-35-106. INELIGIBILITY TO HOLD OFFICE BECAUSE OF CONVICTION. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public

office or to hold the position of campaign treasurer in any campaign in the state of Montana until his final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except 13-35-207(9), he shall be removed from nomination or office, as the case may be, even though he was regularly nominated or elected.

**13-35-107. VOIDING ELECTION.** (1) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held within 75 days of that finding. If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question.

**13-35-108. POWERS OF DISTRICT COURT.** In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

## Part 2

### Specific Provisions

**13-35-201. ELECTORS AND BALLOTS.** (1) An elector may not show the contents of his ballot to anyone after it is marked. No elector may place any mark upon the ballot by which it may be identified as the one voted by him.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. No person other than an election judge may deliver a ballot to an elector.

(3) No person may solicit an elector to show his ballot after it is marked.

(4) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to an election judge.

**13-35-202. CONDUCT OF ELECTION OFFICIALS AND ELECTION JUDGES.** An election officer or judge of an election may not:

(1) deposit in a ballot box a ballot on which the official stamp, as provided by law, does not appear;

(2) prior to putting the ballot of an elector in the ballot box, attempt to find out any name on the ballot or open or examine the folded ballot of an elector;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any folded ballot with the intent to ascertain how the elector has voted;

(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-13-118 and 13-13-119; or

(6) make a false statement in a certificate regarding affirmation.

**13-35-203. INTERFERENCE WITH OFFICIALS.** A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

13-35-204. OFFICIAL MISCONDUCT. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

- (1) knowingly neglects or refuses to perform that duty; or
- (2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

**13-35-205. TAMPERING WITH ELECTION RECORDS AND INFORMATION.** A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

- (1) suppresses any declaration or certificate of nomination which has been filed;
- (2) purposely causes the vote on a machine to be incorrectly recorded as to the candidate or ballot issue voted on;
- (3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;
- (4) changes any ballot after the same has been deposited in the ballot box or adds any ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;
- (5) causes any name to be placed on the registry lists other than in the manner provided by this title; or
- (6) changes a poll list or checklist.

**13-35-206. INJURY TO ELECTION EQUIPMENT, MATERIALS, AND RECORDS.** A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

- (1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;
- (2) during an election:
  - (a) removes or defaces the cards printed for the instruction of the voters; or
    - (b) removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling a voter to prepare his ballot;
    - (3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;
    - (4) carries away or destroys any poll lists, checklists, ballots, or ballot boxes for the purpose of disrupting or invalidating an election;
    - (5) knowingly detains, mutilates, alters, or destroys any election returns;
    - (6) mutilates, secretes, destroys, or alters election records, except as provided by law;

- (7) tampers with, disarranges, defaces, injures, or impairs a voting machine;
- (8) mutilates, injures, or destroys any ballot or appliance used in connection with a voting machine; or
- (9) fraudulently defaces or destroys a declaration or certificate of nomination.

**13-35-207. DECEPTIVE ELECTION PRACTICES.** A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

- (1) falsely represents his name or other information required upon his registry card and causes registration with the card;
- (2) signs a registry card knowingly witnessing any false or misleading statement;
- (3) knowingly causes a false statement, certificate, or return of any kind to be signed;
- (4) falsely makes a declaration or certificate of nomination;
- (5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;
- (6) forges or falsely makes the official endorsement of a ballot;
- (7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;
- (8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;
- (9) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or
- (10) makes a false oath or affidavit where an oath or affidavit is required by law.

**13-35-208. DECEIVING AN ELECTOR.** A person who deceives an elector voting under 13-13-118 or 13-13-119 is guilty of a misdemeanor.

**13-35-209. FRAUDULENT REGISTRATION.** (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

**13-35-210. LIMITS ON VOTING RIGHTS.** (1) No person may vote who is not entitled to vote. No person may vote more than once at an election.

(2) No person may, for any election, apply for a ballot in the name of some other person, whether it be the name of a living, dead, or fictitious person.

**13-35-211. ELECTIONEERING -- SOLICITING INFORMATION FROM ELECTORS.** (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) No person within a polling place or any building in which an election is being held or within 200 feet thereof may solicit from an elector, before or after he has marked his ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.

13-35-212. REPEALED. Sec. 407, Ch. 571, L. 1979.

**13-35-213. PREVENTING PUBLIC MEETINGS OF ELECTORS.** (1) A person who, by threats, intimidations, or violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions is guilty of a misdemeanor.

(2) A person who willfully disturbs or breaks up a public meeting of electors or others, lawfully being held for the purpose of considering public questions, or a public school meeting is guilty of a misdemeanor.

**13-35-214. ILLEGAL INFLUENCE OF VOTERS.** No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

13-35-215. ILLEGAL CONSIDERATION FOR VOTING. No person, directly or indirectly, by himself or by any other person in his behalf, may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so;

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person.

13-35-216. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-35-217. **OFFICERS NOT TO INFLUENCE VOTER.** No officer, while acting in his official capacity, may, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to his original intention or desire.

13-35-218. **COERCION OR UNDUE INFLUENCE OF VOTERS.** (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

13-35-219. **REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-35-220. **Bribing Members of Political Gatherings.** (1) No person may give or offer a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another. No person who is a member of any

of the bodies mentioned in this section may receive or offer to receive any such bribe.

(2) A violation of this section is punishable as provided in 45-7-101(3).

**13-35-221. IMPROPER NOMINATIONS.** (1) No person may pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing him to be or to refrain from or to cease being a candidate, and no person may solicit or receive any payment or promise from another for such purpose.

(2) No person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may:

(a) allow himself to be nominated or refuse to allow himself to be nominated as a candidate at an election;

(b) become, by himself or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if he has been so nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person thereon as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) his candidacy for the nomination is not in good faith.

**13-35-222. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-35-223. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-35-224. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-35-225. ELECTION MATERIALS NOT TO BE ANONYMOUS.** (1) Whenever any person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, such communication shall clearly and conspicuously state the name and address of the printer, if printed commercially, and the name and address of the person who made or financed the expenditure for the communication; including, in the case of a political committee, the name and address of the treasurer.

(2) If any document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

**13-35-226. UNLAWFUL ACTS OF EMPLOYERS AND EMPLOYEES.** (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises (express or implied) calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected, work in his place or establishment will cease, in whole or in part, or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. This section shall apply to corporations, individuals, and public officers and employees.

(2) No person may attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense.

**13-35-227. PROHIBITED CONTRIBUTIONS FROM CORPORATIONS.** (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or a member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

**13-35-228. PROHIBITION OF SALARY INCREASE CONTRIBUTION.** A corporation may not increase the salary of any officer or employee or give an emolument to any officer, employee, or other person with the intention that the increase in salary, the emolument, or any part thereof be contributed to support or oppose a candidate or ballot issue.

**13-35-229. REPEALED.** Sec. 407, Ch. 571, L. 1979.

**13-35-230. REPEALED.** Sec. 407, Ch. 571, L. 1979.

13-35-231. UNLAWFUL FOR POLITICAL PARTY TO ENDORSE JUDICIAL CANDIDATE. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.

13-35-232. REPEALED. Sec. 407, Ch. 571, L. 1979.

**13-35-233. SOLICITATION OF VOTES ON ELECTION DAY.** (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. Failure to remove billboards, yard signs, or posters on election day is not considered a violation. (2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed \$1,000, or both.

**13-35-234. POLITICAL CRIMINAL LIBEL -- MISREPRESENTING VOTING RECORDS. (1)**  
It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

### Part 3

## **Code of Fair Campaign Practices**

13-35-301. ADOPTION OF CODE OF FAIR CAMPAIGN PRACTICES. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

**13-35-302. CANDIDATES TO BE GIVEN OPPORTUNITY TO SUBSCRIBE TO CAMPAIGN PRACTICES CODE -- PUBLICITY.** (1) The commissioner of campaign practices shall prepare a form which contains the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) Each candidate required to file statements or reports with the commissioner shall be sent a copy of this form. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form shall be sent for each election as soon as feasible. The signed form shall be returned to the commissioner.

(3) The commissioner shall supply the secretary of state, the county registrars, and the city and town clerks with forms. Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner, the secretary of state, a county registrar, or a city or town clerk and may sign the form and deliver it to the commissioner.

## CHAPTER 36

### CONTESTS

#### Part 1 -- General Provisions

##### Section

- 13-36-101. Grounds for contest of nomination or election to public office.
- 13-36-102. Time for commencing contest.
- 13-36-103. Court having jurisdiction of proceedings.
- 13-36-104. Nomination contests.

#### Part 2 -- Procedure

- 13-36-201. Contents of contest petition.
- 13-36-202. Reception of illegal votes -- allegations and evidence.
- 13-36-203. Form of complaint.
- 13-36-204. Bond required.
- 13-36-205. Recovery of costs.
- 13-36-206. Notice of filing -- prompt hearing.
- 13-36-207. Hearing of contest.
- 13-36-208. Advancement of cases -- dismissal -- privileges of witnesses.
- 13-36-209. Forfeiture of nomination or office for violation of law -- when inappropriate.
- 13-36-210. Punishment.
- 13-36-211. When nomination or election not to be vacated.

13-36-212. Declaration of result of election after rejection of illegal votes.

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Part 1

General Provisions

**13-36-101. GROUNDS FOR CONTEST OF NOMINATION OR ELECTION TO PUBLIC OFFICE.**

An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote, for any of the following causes:

- (1) on the ground of a deliberate, serious, and material violation of any provision of the law relating to nominations or elections;
- (2) whenever the person whose right is contested was not, at the time of the election, eligible to such office;
- (3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes.

**13-36-102. TIME FOR COMMENCING CONTEST.** (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination he intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which such offense was committed.

**13-36-103. COURT HAVING JURISDICTION OF PROCEEDINGS.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

**13-36-104. NOMINATION CONTESTS.** In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

## Part 2

## Procedure

**13-36-201. CONTENTS OF CONTEST PETITION.** Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested and the grounds of the contest. The petition shall not thereafter be amended, except by leave of the court.

**13-36-202. RECEPTION OF ILLEGAL VOTES -- ALLEGATIONS AND EVIDENCE.** When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other candidate for the same office. No testimony shall be received of any illegal votes unless the party contesting such election delivers to the opposite party, at least 3 days before such trial, a written list of the number of illegal votes (and by whom given) which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement if he did not know and by reasonable diligence was unable to learn of such additional illegal votes (and by whom they were given) before delivering such written list.

**13-36-203. FORM OF COMPLAINT.** (1) A petition or complaint filed under the provisions of this chapter shall be sufficient if it is substantially in the following form:

In the District Court of the  
.... Judicial District,  
for the County of ...., State of Montana.

A B (or A B and C D), Contestants,  
vs.  
E F, Contestee.

The petition of contestant (or contestants) above named alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., A. D. 19.., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at said election, and the board of canvassers has returned the said .... as being duly nominated (or elected) at said election.

That contestant A B voted (or had a right to vote, as the case may be) at said election (or claims to have had a right to be returned as the nominee or officer elected or nominated at said election, or was a candidate at said election, as the case may be), and said contestant C D (here state in like manner the right of each contestant).

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said .... was not duly nominated (or elected), and that said election was void or that said A B or C D, as the case may be, was duly nominated (or elected), and for such other and further relief as to the court may seem just and legal in the premises.

(2) Said complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

**13-36-204. BOND REQUIRED.** Before any proceeding on the petition, the petitioner shall give bond to the state in such sum as the court may order, not exceeding \$2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and attorney's fees that may be awarded against him if he shall not prevail.

**13-36-205. RECOVERY OF COSTS.** In any contest, the prevailing party may recover his costs, disbursements, and reasonable attorney's fees. Costs, disbursements, and attorney's fees in all such cases shall be in the discretion of the court. In case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond.

**13-36-206. NOTICE OF FILING -- PROMPT HEARING.** On the filing of any such petition, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing him to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear said cause, and every such contest shall take precedence over all other business on the court docket and shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

**13-36-207. HEARING OF CONTEST.** The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on such petition and no person other than the parties and their attorneys may be heard thereon except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, except that the judge may in his discretion impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office shall be by the judgment declared vacant, except as provided in 13-36-212, and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office.

**13-36-208. ADVANCEMENT OF CASES -- DISMISSAL -- PRIVILEGES OF WITNESSES.**

Proceedings under this title shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition may be dismissed without the consent of the county attorney unless the same is dismissed by the court. No person may be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person or any evidence that is the direct result of such evidence or information that he may have so given may be offered or used against him in any civil or criminal prosecution, except in a prosecution for perjury committed in such testimony.

**13-36-209. FORFEITURE OF NOMINATION OR OFFICE FOR VIOLATION OF LAW - WHEN INAPPROPRIATE.** If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside such nomination or election or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate or with his knowledge or consent or was committed without his sanction or connivance and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate; that the offense or offenses complained of were trivial, unimportant, and limited in character and that in all other respects his participation in the election was free from such offenses or illegal acts; or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office.

**13-36-210. PUNISHMENT.** If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside such election or to remove any person from his office, it appears that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exceptions to this judgment shall be those provided in 13-36-209. Such judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

**13-36-211. WHEN NOMINATION OR ELECTION NOT TO BE VACATED.** Nothing in the ground of contest specified in 13-36-101(3) is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear either:

(1) that the candidate or nominee whose right is contested had knowledge of or connived at such illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

**13-36-212. DECLARATION OF RESULT OF ELECTION AFTER REJECTION OF ILLEGAL VOTES.** If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

## CHAPTER 37

### CONTROL OF CAMPAIGN PRACTICES

#### Part 1 -- Commissioner of Political Practices

##### Section

- 13-37-101. Commissioner of political practices.
- 13-37-102. Creation of office.
- 13-37-103. Term of office -- limitations on holding other office.
- 13-37-104. Vacancy.
- 13-37-105. Impeachment and prosecution of commissioner.
- 13-37-106. Salary.
  - Sections 13-37-107 through 13-37-110 reserved.
- 13-37-111. Investigative powers and duties.
- 13-37-112. Personnel and budget.
- 13-37-113. Hiring of attorneys -- prosecutions.
- 13-37-114. Rules.
- 13-37-115. Orders of noncompliance.
- 13-37-116. Exercise of powers.
- 13-37-117. Commissioner to provide forms and manuals.
- 13-37-118. Information voluntarily supplied.
- 13-37-119. Availability of information.
- 13-37-120. Reports.
- 13-37-121. Inspection of statements and reports -- issuance of orders of noncompliance.
- 13-37-122. Judicial review of orders of noncompliance.
- 13-37-123. Examination of reports after election.
- 13-37-124. Consultation and cooperation with county attorney.
- 13-37-125. Powers of county attorney to investigate.
- 13-37-126. Names not to be printed on ballot.
- 13-37-127. Withholding of certificates of nomination or election.
- 13-37-128. Cause of action created.
- 13-37-129. Liability and disposition of fines.
- 13-37-130. Limitation of action.

**Part 2 -- Campaign Finance**

- 13-37-201. Campaign treasurer.
- 13-37-202. Deputy campaign treasurers.
- 13-37-203. Qualifications of campaign and deputy campaign treasurers.
- 13-37-204. Removal of campaign and deputy campaign treasurers.
- 13-37-205. Campaign depositories.
- 13-37-206. Exception for certain school districts.
- 13-37-207. Deposit of contributions -- statement of campaign treasurer.
- 13-37-208. Treasurer to keep records.
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- 13-37-210. Naming and labeling of political committees.  
Sections 13-37-211 through 13-37-214 reserved.
- 13-37-215. Petty cash funds allowed.
- 13-37-216. Limitations on contributions.
- 13-37-217. Contributions in name of undisclosed principal.
- 13-37-218. Limitations on receipts from political committees.  
Sections 13-37-219 through 13-37-224 reserved.
- 13-37-225. Reports of contributions and expenditures required.
- 13-37-226. Time for filing reports.
- 13-37-227. Comprehensive report when several candidates or issues involved.
- 13-37-228. Time periods covered by reports.
- 13-37-229. Disclosure of contributions received.
- 13-37-230. Disclosure of expenditures made.
- 13-37-231. Reports to be certified as true and correct.

**Part 3 -- Public Campaign Finance**

- 13-37-301. Short title.
- 13-37-302. Definitions.
- 13-37-303. Donation by taxpayer.
- 13-37-304. Public campaign fund.
- 13-37-305. Records to be kept -- availability.
- 13-37-306. Penalties for violation.
- 13-37-307. Application to receive money.
- 13-37-308. Unopposed candidates ineligible.

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**Part 1****Commissioner of Political Practices**

**13-37-101. COMMISSIONER OF POLITICAL PRACTICES.** In this chapter, "commissioner" means the commissioner of political practices created by 13-37-102, unless the context clearly indicates otherwise.

**13-37-102. CREATION OF OFFICE.** (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for his considera-

tion. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner of political practices may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The sufficiency of such causes shall be subject to judicial review.

**13-37-103. TERM OF OFFICE -- LIMITATIONS ON HOLDING OTHER OFFICE.** (1) The individual selected to serve as the commissioner of political practices is appointed for a 6-year term, but he is thereafter ineligible to serve as the commissioner of political practices.

(2) The individual selected to serve as commissioner of political practices is precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 years from the time that he leaves office as commissioner.

**13-37-104. VACANCY.** (1) If for any reason a vacancy occurs in the position of commissioner, a successor shall be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Every nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1).

**13-37-105. IMPEACHMENT AND PROSECUTION OF COMMISSIONER.** The commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

**13-37-106. SALARY.** (1) The commissioner of political practices is entitled to receive a salary of \$27,655 a year.

(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislature.

13-37-107 through 13-37-110 reserved.

**13-37-111. INVESTIGATIVE POWERS AND DUTIES.** (1) The commissioner of political practices shall be responsible for investigating all of the alleged violations of the election laws contained in chapters 35, 36, or 37 of this title and shall in conjunction with the county attorneys be responsible for enforcing these election laws.

(2) The commissioner may investigate all statements filed pursuant to the provisions of chapters 35, 36, or 37 of this title and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapters 35, 36, or 37 of this title. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of chapters 35, 36, or 37 of this title or any rule adopted pursuant thereto.

(3) The commissioner may inspect any records, accounts, or books that must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title which are held by any political committee or candidate, so long as such inspection is made during reasonable office hours.

(4) The commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

**13-37-112. PERSONNEL AND BUDGET.** (1) The commissioner shall select an appropriate staff to enforce the provisions of chapters 35, 36, or 37 of this title, and he may hire and fire all personnel under his supervision.

(2) The commissioner shall be responsible for preparing, administering, and allocating the budget for his office.

**13-37-113. HIRING OF ATTORNEYS -- PROSECUTIONS.** The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapters 35, 36, or 37 of this title. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general, and he may prosecute, subject to the control and supervision of the commissioner and the provisions of 13-37-124 and 13-37-125, any criminal or civil action arising out of a violation of any provision of chapters 35, 36, or 37 of this title. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapters 35, 36, or 37 of this title;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapters 35, 36, or 37 of this title are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapters 35, 36, or 37 of this title; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapters 35, 36, or 37 of this title.

**13-37-114. RULES.** The commissioner shall promulgate and publish rules to carry out the provisions of chapters 35, 36, or 37 of this title and shall promulgate such rules in conformance with the Montana Administrative Procedure Act.

**13-37-115. ORDERS OF NONCOMPLIANCE.** The commissioner may issue orders of noncompliance as prescribed by 13-37-121.

**13-37-116. EXERCISE OF POWERS.** The commissioner may exercise all of the powers conferred upon him by law in any jurisdiction or political subdivision of the state.

**13-37-117. COMMISSIONER TO PROVIDE FORMS AND MANUALS.** (1) The commissioner shall prescribe forms for statements and other information required to be filed pursuant to chapters 35, 36, or 37 of this title and furnish forms and appropriate information to persons required to file statements and information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file statements pursuant to chapters 35, 36, or 37 of this title.

(3) The commissioner shall prescribe the manner in which the county clerk and recorders shall receive, file, collate, and maintain reports filed with them under chapters 35, 36, or 37 of this title.

**13-37-118. INFORMATION VOLUNTARILY SUPPLIED.** The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of chapters 35, 36, or 37 of this title.

**13-37-119. AVAILABILITY OF INFORMATION.** (1) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(2) The commissioner shall preserve statements and other information filed with his office for a period of 10 years from date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and such other reports as he considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports.

**13-37-120. REPORTS.** The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ and the money he has disbursed. The commissioner shall also make further reports on the matters within his jurisdiction that the legislature may prescribe and shall also make recommendations for further legislation that may appear desirable.

**13-37-121. INSPECTION OF STATEMENTS AND REPORTS -- ISSUANCE OF ORDERS OF NONCOMPLIANCE.** (1) Each statement and report filed with the commissioner during an election or within 60 days thereafter shall be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. Such an order of noncompliance shall be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement or report as required by this chapter or that a statement or report filed by a person does not conform to law; or

(b) it is determined that a statement or report filed with the commissioner does not conform to the requirements of this chapter or that a person has failed to file a statement or report required by law.

(2) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may in-

itiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(3) If an order of noncompliance is issued during any period other than that described in subsection (2), a candidate or political committee shall submit the necessary information within 10 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

**13-37-122. JUDICIAL REVIEW OF ORDERS OF NONCOMPLIANCE.** A candidate or political treasurer aggrieved by the issuance of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section shall be expeditiously reviewed by the appropriate district court.

**13-37-123. EXAMINATION OF REPORTS AFTER ELECTION.** Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of this chapter to determine whether the statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of this chapter. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to this chapter or the alleged failure to report any contribution or expenditure required to be reported pursuant to this chapter.

**13-37-124. CONSULTATION AND COOPERATION WITH COUNTY ATTORNEY.** (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37 of this title, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapters 35, 36, or 37 of this title.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, shall be deposited in the state general fund.

**13-37-125. POWERS OF COUNTY ATTORNEY TO INVESTIGATE.** (1) Nothing in chapters 35, 36, or 37 of this title prevents a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

- (a) administer oaths and affirmations;
- (b) subpoena witnesses and compel their attendance;
- (c) take evidence; and
- (d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

**13-37-126. NAMES NOT TO BE PRINTED ON BALLOT.** (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a political treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner must, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot.

**13-37-127. WITHHOLDING OF CERTIFICATES OF NOMINATION OR ELECTION.** (1) A certificate of election shall not be granted to any candidate until he or his political treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. No candidate for an elective office may assume the powers and duties of that office until he has received a certificate of election as provided by law. A certificate of election shall only be issued by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or his treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued.

**13-37-128. CAUSE OF ACTION CREATED.** (1) Except as provided in 13-37-306, any person who intentionally or negligently violates any of the reporting provisions of this chapter, shall be liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) Any person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or

three times the amount of the unlawful contribution or expenditure, whichever is greater.

**13-37-129. LIABILITY AND DISPOSITION OF FINES.** In determining the amount of liability under 13-37-128, the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney in a court other than a justice's court, the county shall receive 50% of the amount recovered. The remaining 50% shall be deposited in the general fund of the state. In an action brought by the commissioner in a court other than a justices' court, the entire amount recovered shall be paid to the general fund of the state.

**13-37-130. LIMITATION OF ACTION.** No action may be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts which give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 shall be the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter, except as provided in 13-37-306. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36.

## Part 2

### Campaign Finance

**13-37-201. CAMPAIGN TREASURER.** Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which shall include an organizational statement and set forth the name and address of all other officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee shall be filed with the commissioner and the appropriate county clerk and recorder as specified for the filing of reports in 13-37-225.

**13-37-202. DEPUTY CAMPAIGN TREASURERS.** (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and the chairman of the political committee, in the case of a political committee. The written authorization shall be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208.

**13-37-203. QUALIFICATIONS OF CAMPAIGN AND DEPUTY CAMPAIGN TREASURERS.** Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 shall be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint himself as his own campaign or deputy campaign treasurer. No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

**13-37-204. REMOVAL OF CAMPAIGN AND DEPUTY CAMPAIGN TREASURERS.** A candidate or political committee may remove his or its campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer shall immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of his or its campaign treasurer before compliance with any obligation of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in 13-37-201.

**13-37-205. CAMPAIGN DEPOSITORYIES.** Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to 13-37-201. Nothing in this section shall prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize his regular or personal account in the depository as a campaign account.

**13-37-206. EXCEPTION FOR CERTAIN SCHOOL DISTRICTS.** The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

- (1) a first-class district located in a county having a population of less than 15,000;
- (2) a second- or third-class district; or
- (3) a county high school district having a student enrollment of less than 2,000.

**13-37-207. DEPOSIT OF CONTRIBUTIONS -- STATEMENT OF CAMPAIGN TREASURER.** (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee shall be deposited prior to the end of the fifth business day following their receipt (Sundays and holidays excluded) in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited shall be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit shall be kept by the treasurer as a part of his records.

**13-37-208. TREASURER TO KEEP RECORDS.** (1) The campaign treasurer of each candidate and each political committee shall keep detailed accounts (current within not more than 10 days after the date of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5th day before the date of filing of a report as specified in 13-37-226) of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a report filed under this chapter.

(2) Accounts of a deputy campaign treasurer shall be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate or political committee shall be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

**13-37-209. INSPECTION OF RECORDS.** Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

**13-37-210. NAMING AND LABELING OF POLITICAL COMMITTEES.** (1) Any political committee filing a certificaion and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; and

(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot measure by printing or broadcasting its name, as provided under subsection

(1)(a), and position in support of or opposition to the candidate or ballot measure as a part of the media advertisement or other paid public statement.

(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under 13-37-128.

13-37-211 through 13-37-214 reserved.

**13-37-215. PETTY CASH FUNDS ALLOWED.** (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), \$100 per week; and

(b) for all other candidates and political committees, \$25 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, postage stamps, and other necessities in an amount of less than \$25. Petty cash shall not be used for the purchase of time, space, or services from any communications medium.

**13-37-216. LIMITATIONS ON CONTRIBUTIONS.** (1) Aggregate contributions for all elections in a campaign by an individual, other than the candidate, to a candidate and political committees organized on his behalf are limited as follows:

(a) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed \$1,500;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$750;

(c) for a candidate for public service commissioner, district court judge, or state senator, not to exceed \$400; and

(d) for a candidate for any other public office, not to exceed \$250.

(2) For the purposes of this subsection, an independent committee means a committee which is not specifically organized on behalf of a particular candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. For the purpose of limitation on contributions, political party organizations are independent committees. Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed \$8,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$2,000;

(c) for a candidate for public service commissioner, not to exceed \$1,000;

(d) for a candidate for the state senate, not to exceed \$600;

(e) for a candidate for any other public office, not to exceed \$300.

(3) The limitations imposed by this section do not apply to public funds contributed to a candidate under part 3 of this chapter.

**13-37-217. CONTRIBUTIONS IN NAME OF UNDISCLOSED PRINCIPAL.** No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished.

**13-37-218. LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES.** A candidate for the state senate may receive no more than \$1,000 in total combined monetary contributions from all political committees contributing to his campaign, and a candidate for the state house of representatives may receive no more than \$600 in total combined monetary contributions from all political committees contributing to his campaign. The foregoing limitations shall be multiplied by the inflation factor as defined in 15-30-101(8) for the year in which general elections are held after 1984; the resulting figure shall be rounded off to the nearest \$50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions may not be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

**13-37-219 through 13-37-224 reserved.**

**13-37-225. REPORTS OF CONTRIBUTIONS AND EXPENDITURES REQUIRED.** (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter shall be filed with the commissioner and with the county clerk and recorder of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the county clerk and recorder of the county in which the election is to be held or, if the election is to be held in more than one county, with the clerk and recorder in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

**13-37-226. TIME FOR FILING REPORTS.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees which are specifically organized to support or oppose a particular statewide candidate or issue shall file reports:

(a) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days next preceding the date on which an election is held and within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Candidates for a state district office, including but not limited to candidates for the legislature, public service commission, or district court judge, and political committees which are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 10th day next preceding the date on which an election is held and within 24 hours after receiving a contribution of \$100 or more if received between the 15th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files his or its closing report as specified in 13-37-228(3).

(3) Candidates for any other public office and political committees which are specifically organized to support or oppose a particular local issue shall be required to file the reports specified in subsection (2) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.

(4) For the purposes of this subsection, a committee which is not specifically organized to support or oppose a particular candidate or ballot issue and which receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 10th day next preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(5) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(6) All reports required by this section shall be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and subsections (1) through (5) of this section.

**13-37-227. COMPREHENSIVE REPORT WHEN SEVERAL CANDIDATES OR ISSUES INVOLVED.**  
The commissioner shall adopt rules that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. The commissioner shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title.

**13-37-228. TIME PERIODS COVERED BY REPORTS.** Reports filed under 13-37-225 and 13-37-226 shall be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through (4) of 13-37-226.

(2) Subsequent periodic reports shall cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (4).

(3) Closing reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which he or it participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election.

**13-37-229. DISCLOSURE OF CONTRIBUTIONS RECEIVED.** Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;  
(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made aggregate contributions (including the purchase of tickets and other items for events such as dinners, luncheons, rallies, and similar fundraising events), other than loans, to the candidate or political committee. of:

(a) \$75 or more if the candidate has filed for a state office to be filled by a statewide vote of all the electors of Montana or if the political committee was specifically organized to support or oppose a particular statewide candidate or issue; or

(b) \$35 or more for any other candidate or political committee;

(3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person;

(4) the total sum of individual contributions made to or for the political committee or candidate and not reported under subsections (2) and (3) of this section;

(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(6) each loan from any person during the reporting period, together with the full names and mailing addresses (occupation and principal place of business, if any) of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or candidates, in the form prescribed by the commissioner;

(8) an itemized account of proceeds which total less than \$75 under subsection (2)(a), or \$35 under subsection (2)(b), from a person from mass collections made at fund-raising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) of this section during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.

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**13-37-230. DISCLOSURE OF EXPENDITURES MADE.** Each report required by this chapter shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

- (1) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;
- (2) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;
- (3) the total sum of expenditures made by a political committee or candidate during the reporting period;
- (4) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;
- (5) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;
- (6) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner;
- (7) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

**13-37-231. REPORTS TO BE CERTIFIED AS TRUE AND CORRECT.** (1) A report required by this chapter to be filed by a candidate or political committee shall be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report shall be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement filed by a candidate or political committee shall be preserved by the individual filing it for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

## Part 3

## Public Campaign Finance

13-37-301. **SHORT TITLE.** This part may be cited as "The Public Campaign Fund Act".

13-37-302. **DEFINITIONS.** As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Fund" means the election campaign fund established in 13-37-304.
- (2) "Political party" is a party whose candidate for governor in the last general election received 5% or more of the total votes cast for that office as verified by the secretary of state.
- (3) "Department" means the department of revenue provided for in Title 2, chapter 15, part 13.
- (4) "Candidate" means an individual who has been nominated by a political party for election to the office of governor-lieutenant governor or has been nominated in the nonpartisan primary election for the office of chief justice or justice of the supreme court in this state.
- (5) "Individual" means a natural person.

13-37-303. **DONATION BY TAXPAYER.** (1) An individual whose withheld income tax or payment of estimated tax exceeds by more than \$1 his income tax liability for the taxable year may donate \$1 to be paid to the fund. In the case of a joint return, as provided in 15-30-142, of a husband and wife having an income tax overpayment as defined in 15-30-149 of \$2 or more, each spouse may donate \$1 to be paid to the fund.

(2) An individual with an unpaid tax liability may at the time of payment donate an extra \$1 to be paid to the fund.

(3) The department shall provide a place on the face of the blank form of return, provided for in 15-30-144, where an individual may make the donations provided for in subsections (1) and (2). The form shall adequately explain the individual's option to donate \$1 to the fund.

13-37-304. **PUBLIC CAMPAIGN FUND.** (1) There is a public campaign fund within a state special revenue fund provided for in 17-2-102.

(2) All money designated under 13-37-303 shall be deposited in the fund. Such money in the fund is statutorily appropriated as provided in 17-7-502, for the purpose of subsection (3) and (4).

(3) (a) Five months before the general election in the election year, money in the fund shall be paid over in equal amounts to all eligible candidates for the designated political office according to the percentages in (3)(b). The money shall be spent only for the legitimate campaign expenses of the candidates.

(b) The money shall be distributed in the following percentages:  
(i) campaign for office of governor-lieutenant governor, 50%;  
(ii) campaigns for offices of chief justice and justice of the supreme court, 50% equally allocated to each eligible campaign fund.

(4) Three months before the general election in a general election year the remainder of any money in the fund shall be remitted to the treasurer of each candidate in the same proportion as provided in subsection (3)(b).

13-37-305. **RECORDS TO BE KEPT -- AVAILABILITY.** (1) The treasurer of each political party shall maintain a complete record of all disbursements of funds received by him under 13-37-304 and used for the candidate's campaign expenses plus receipts or other evidence of each expense.

(2) The record shall be available for inspection by anyone at any reasonable time. A copy shall be deposited in the office of the secretary of state by December 31 of each general election year.

13-37-306. **PENALTIES FOR VIOLATION.** The use of money from the fund by anyone for any purpose other than the legitimate campaign expenses of a candidate for a designated public office is an offense and is punishable by imprisonment for not more than 1 year, by a fine of not more than \$5,000, or by both.

13-37-307. **APPLICATION TO RECEIVE MONEY.** All candidates who wish to receive money from the fund must notify the department on a form prescribed and supplied by the department. Acceptance of money from the fund is voluntary.

13-37-308. **UNOPPOSED CANDIDATES INELIGIBLE.** In a campaign where the candidate is unopposed, including campaigns for chief justice or justice of the supreme court, the candidate may not receive any campaign funds.

## CHAPTER 38

### POLITICAL PARTIES

#### Part 1 -- General Provisions

##### Section

13-38-101. Powers of parties.

13-38-102. Repealed. Sec. 1, Ch. 513, L. 1981.

13-38-103. Department of Justice to submit new-voter lists to major political parties.

13-38-104. Party rules to be filed with secretary of state.

13-38-105. County committee rules to be filed with election administrator.

#### Part 2 -- Committee Structure

13-38-201. Election of committeemen at primary.

13-38-202. Committeemen as party representatives -- county and city central committees.

13-38-203. Powers of county and city central committees -- role of state central committee where no county central committee exists.

13-38-204. Committees to fill vacancies among nominees under certain circumstances.

13-38-205. Organization and operation of committee.

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Part 1

**General Provisions**

**13-38-101. POWERS OF PARTIES.** Each political party shall have power to:

- (1) make its own rules;
- (2) provide for and select its own offices;
- (3) call conventions and provide for the number and qualifications of delegates;
- (4) adopt platforms;
- (5) provide for selection of delegates to national conventions;
- (6) provide for the nomination of presidential electors;
- (7) provide for the selection of national committeemen and women;
- (8) make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where such vacancies are caused by death, resignation, or removal from the electoral district;
- (9) perform all other functions inherent in such an organization.

**13-38-102. REPEALED.** Sec. 1, Ch. 513, L. 1981.

**13-38-103. DEPARTMENT OF JUSTICE TO SUBMIT NEW-VOTER LISTS TO MAJOR POLITICAL PARTIES.** No later than January 31 in any year in which a general election is held, the division of motor vehicles, department of justice, shall submit to the chairman of each major political party of the state four copies of a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the division of motor vehicles shall be responsible for any honest error or omission in preparing the lists.

**13-38-104. PARTY RULES TO BE FILED WITH SECRETARY OF STATE.** The state central committee of each political party in this state must file a current copy of the rules of government of the party with the secretary of state.

**13-38-105. COUNTY COMMITTEE RULES TO BE FILED WITH ELECTION ADMINISTRATOR.** The county committee of each political party of this state must file a current copy of its rules of government with the election administrator.

Part 2

**Committee Structure**

**13-38-201. ELECTION OF COMMITTEEMEN AT PRIMARY.** (1) Each political party shall elect at each primary election one man and one woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the

registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

**13-38-202. COMMITTEEMEN AS PARTY REPRESENTATIVES -- COUNTY AND CITY CENTRAL COMMITTEES.** (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of 2 years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

**13-38-203. POWERS OF COUNTY AND CITY CENTRAL COMMITTEES -- ROLE OF STATE CENTRAL COMMITTEE WHERE NO COUNTY CENTRAL COMMITTEE EXISTS.** (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of whom shall be a man and one of whom shall be a woman, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

**13-38-204. COMMITTEES TO FILL VACANCIES AMONG NOMINEES UNDER CERTAIN CIRCUMSTANCES.** County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

**13-38-205. ORGANIZATION AND OPERATION OF COMMITTEE.** (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one or more vice-chairmen. The chairman or first vice-chairman shall be a woman. The committee shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The chairman of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central

committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy may be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

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